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ABSTRACT

This document is a teacher's guide to a series of mass transit advertisement posters illustrating Bill of Rights topics. The five posters in the series are discussed in five separate sections. Each section is divided into three units, each consisting of a learning activity, one for the secondary level, one for the middle school level, and one designed for the elementary level. The sections are: (1) freedom of religion, (2) freedom of speech, (3) the right to assemble, (4) the right to counsel, and (5) equal protection. The teaching strategies and classroom activities contained in the document build upon the themes illustrated by the posters. The sections include student handouts, lesson objectives, procedures, lists of books and reference materials, and questions. The activities for the elementary level include a lesson researching and discussing holidays from many cultures, a play about Martin Luther King Jr.'s "I Have a Dream" speech, a talk show about women in the women's suffrage movement, study of a famous case on the right to counsel, and a sampling of children's literature combined with journal writing. The middle school activities include class discussions, a study of cases, an attorney visit to the classroom, and a group chart activity. At the secondary level, activities include study of cases, speech writing, research and discussion, and a study of local and state laws. (DK)

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The Bill of Rights guarantees religious freedom. Otherwise he wouldn't have a prayer.
The Bill of Rights guarantees freedom of speech. Otherwise it might all have been a dream.
The Bill of Rights guarantees the right to assemble. Otherwise they might still be that one step behind.
I WISH MA COULD VOTE

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A TEACHER'S GUIDE TO THE Bill of Rights Poster Series

SO 023 624

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The Bill of Rights guarantees an accused the right to an attorney.
The Fourteenth Amendment guarantees equal protection. Otherwise separate might still be considered equal.
WHITE
COLORED

American Bar Association Special Committee on Youth Education for Citizenship

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INTRODUCTION

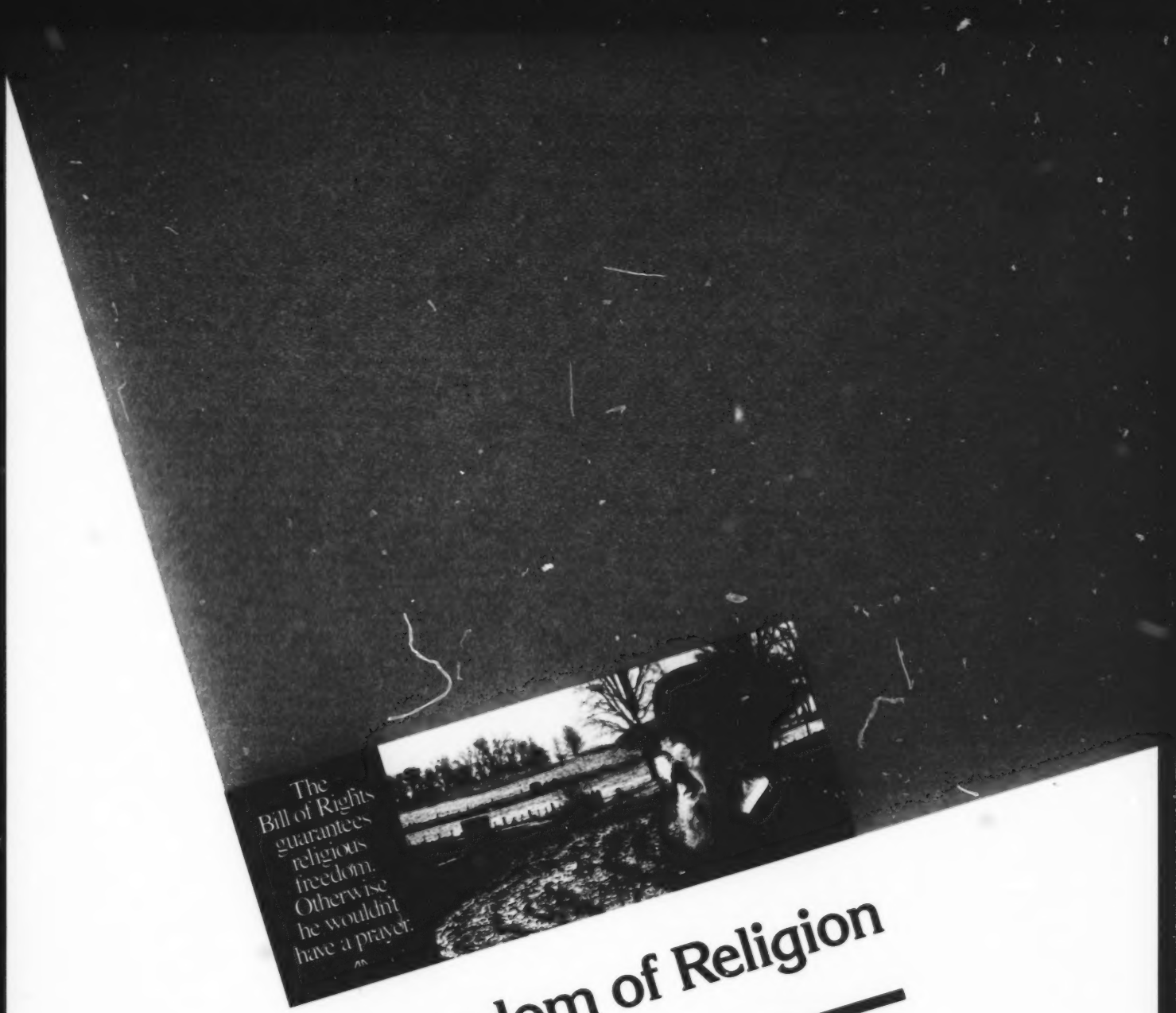
With each passing day, more and more nations are throwing off the shackles of totalitarianism and taking the first tentative steps toward freedom and justice. As Americans, we watch with a sense of pride and kinship as these emerging democracies take their place in the world community. During this era of change, we proudly celebrate our own democratic traditions, reaffirming our commitment to the Bill of Rights and its principles of liberty and justice for all.

At the same time, however, we must recognize that the freedoms set forth in the Bill of Rights are fragile, and that they depend as much upon citizen understanding as they do on national pride. The 21st century promises to be a time of rapid technological, economic, and political change. These changes, many of which are already being felt in our society, will present unprecedented challenges to the Bill of Rights. Its vitality, and the strength of our democracy, will – more than ever before in our history – depend upon an educated, informed and participating citizenry.

To encourage all Americans to reaffirm their commitment to the Bill of Rights, the American Bar Association, in creative collaboration with the international communications firm of D'Arcy, Masius, Benton & Bowles, developed a series of award-winning mass transit advertisements illustrating Bill of Rights topics. The five posters in this series are highlighted on the cover of this guide.

The ABA Special Committee on Youth Education for Citizenship, building on its twenty-year history of support for civic education in the nation's schools, saw in this series of posters unique instructional opportunities. To enhance understanding of the principles which underlie these compelling images, we asked a diverse and talented group of educators to develop teaching strategies and classroom activities which build upon the themes illustrated by the posters. The variety of creative approaches exhibited in the pages that follow attest to the high level of scholarship, dedication and hard work they brought to their task. We thank them for their efforts. We believe that this guide will play a useful part in your efforts to prepare young Americans for effective and responsible citizenship.

Mabel C. McKinney-Browning
Staff Director
Special Committee on Youth Education for Citizenship
American Bar Association



Freedom of Religion

Freedom of Religion

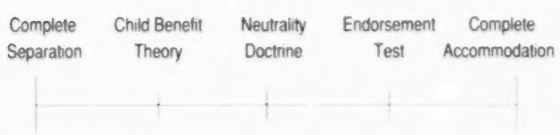
Freedom of Religion and the Public Schools/Secondary — Mary Louise Williams

Rationale

1. To understand the concepts of free exercise and establishment.
2. To apply the concepts to important cases through five decades of historical change.
3. To analyze various guidelines used by the Court for determining violations of "Establishment."
4. To evaluate the present Supreme Court's decisions on the future of religion and public education.

Procedure

1. Give each student a copy of Student Handout 1. In the large group go over the material. This material provides students with concepts and information for the interactive lesson that follows.
2. Directions for the lesson activity: Organize the students into small groups of three to five. Give each student a copy of Student Handout 2. Each group gets a copy of Student Handout 3. Have them read the cases carefully and write their answers on the worksheet provided.
   a. Look at the date of the case. Think about the historical setting of the time in which the decision was being made. What was happening politically and socially? (You may wish to review the historical setting of each case with the entire group. Ask them to think of all the things happening in each decade both at home and abroad. For example: 1940—Battle of Britain and collapse of Europe, Lend-Lease, U.S. trying to stay out of war; 1943—U.S. at war in Pacific and North Africa, Hitler's domination of Europe; 1950s on—civil rights movement, women's movement, "hippie" movement, Vietnam and the Tet offensive, anti-war demonstrations, SDS, political climate of each decade, each president and his influence on the Court, etc.)
   b. Decide what the constitutional issue is. Is the case a "free exercise" issue, an issue of "establishment," or both?
   c. Come to a decision. Determine how the Supreme Court would rule in the case. Is the case a violation of the religion clauses of the Constitution? To determine if an "establishment" issue is a violation, use the guidelines, principles or "measuring sticks." Below is an example of a continuum that might be used on an overhead projector or blackboard to help explain the guidelines or principles. (Perhaps the students may wish to develop the continuum.)



   d. Each group should be able to explain its decisions and reasoning to the rest of the class.
3. In the large group have each small group give its decisions and reasonings.
4. Debriefing: The following questions can be used for a guide.
   a. How difficult was it to determine whether the issue was one of free exercise or establishment? Whether the legislation was in violation of the religion clauses?
   b. Did knowing the historical setting influence your decision in any way?
   c. Did the guidelines or principles help in determining violation of the Establishment Clause?
   d. Why do you think the Court has developed so many guidelines for determining violations of Establishment and so few for Free Exercise?
   e. Why has the Court kept revising its "measuring sticks"?
   f. In regard to the religion clauses and the public schools, what do you see as the Court's most difficult task?
   g. Judging from the principles in use in the last decade or so, what do you think will be the future of the "wall of separation of church and state" within the public schools?
   h. Knowing what you do about the Court decisions, what do you think should be the future of the "wall of separation of church and state" within the public schools?

(Author's note: I wish to acknowledge the generous contribution and guidance of Dr. Isidore Starr in the preparation of this activity, particularly two articles he wrote for *Update on Law-Related Education*, "Teetering on the Wall of Separation" (from which many of the ideas for the continuum are drawn) from the Winter 1979 issue and "My Pilgrimage to the Wall of Separation" which appeared in the Spring 1985 issue.)

Student Handout 1

BACKGROUND INFORMATION

We often hear the comment that the Supreme Court has "taken God out of the classroom." To know that this is not true, one need only be in a high school classroom during final exams to see pencils tightly clenched and heads briefly bowed. What has been taken out of the classroom is the intentional advancement of religion by the school and the community. In the last four decades there has been a reaffirming of "separation of church and state." To understand why the Supreme Court has ruled as it has, we need to first understand the references to religion in the Constitution which are a part of the basis for the decisions.

When the President is sworn into office, he takes the Presidential Oath found in Article II. He concludes the oath with "...so help me God," which, contrary to popular belief, is not written into the Constitution. It was an addition made by George Washington to the oath. The first reference is in Article VI, "...but no religious test shall ever be required as

a qualification to any office or public trust under the United States." Article VII makes a religious reference with "...in the year of our Lord...." The First Amendment states, "Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof...." These are the only references to religion to be found in the Constitution.

SEPARATION OF CHURCH AND STATE

With such limited guidance from the Constitution, the Court often turns to the writings of the framers of the Constitution who expressed their positions on freedom of religion. Thomas Jefferson wrote:

> I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion or prohibiting the free exercise thereof," thus building a wall of separation between church and state.
> (Letter to Danbury Baptist Association, 1802.)

Even one of the founders of the thirteen original colonies, Roger Williams of Rhode Island, had his belief in separation of church and state. He wrote,

> When they have opened a gap in the hedge or wall of separation between the garden of the church and the wilderness of the world, God hath ever broke down the wall itself, removed the candlestick, and made His garden a wilderness, as at this day.
> (quoted from Perry Miller, *Roger Williams: His Contribution to the American Tradition* (New York: Atheneum, 1962) p. 98.)

To paraphrase Dr. Isidore Starr, constitutional scholar and mentor teacher, Williams wanted to separate the church from the influences of the secular world while Jefferson wanted to separate the public sector or state from the church so that each would remain free from the negative influences of the other. But both believed in "a wall of separation."

These positions have been reinterpreted over time as political and social attitudes have changed. Thus, one has to examine the historical framework in which decisions are made. As Justice Oliver Wendell Holmes said, "A page of history is worth a volume of logic." One needs to look to those pages of history to understand why a particular Court ruled as it did in the special times in which it existed.

We will be examining specific court cases that challenged the constitutionality of laws dealing with religion and the schools, the historical settings in which the Supreme Court's decisions were made. We will also concern ourselves with the First Amendment Religion Clauses and the Fourteenth Amendment Due Process Clause. According to several Supreme Court rulings, the Due Process Clause absorbs the Religion Clauses legally obligating the states to comply with them.

RESPECTING AN ESTABLISHMENT OF AND THE FREE EXERCISE OF RELIGION

> AMENDMENT I
> Congress shall make no law *respecting an establishment of religion* or *prohibiting the free exercise thereof*.
>
> AMENDMENT XIV
> ...nor shall any state deprive any person of life, liberty, or property without *due process of law*;...."

This Due Process Clause, as stated above, absorbs the Religion Clauses, legally binding the states to comply with them. Following is an excerpt from one of the Supreme Court decisions which determined this.

> The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment. The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislature of the states as incompetent as Congress to enact such laws.
> *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

What is "free exercise"? No institution of the federal or state governments (which includes public schools) can in any manner interfere with an individual's right to believe or not to believe, the right to join a church or not join, the right to be an agnostic or an atheist.

What is "respecting an establishment of religion"? It sets up a wall of separation between church and state. The phrase "respecting an establishment of religion," has been interpreted by the Supreme Court to mean:

> Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.
> *Everson v. Board of Education*, 330 U.S. 15 (1947).

In other words, no governmental institution of the nation or states (which includes public schools) can designate or establish a national church. Nor can the cause of religion or non-religion be advanced. Government must be neutral.

GUIDELINES FOR DETERMINING VIOLATIONS OF THE ESTABLISHMENT CLAUSE

The Supreme Court has created over the years several guidelines or "measuring sticks" by which it determines when legislation is in violation of the Establishment Clause. If one were to place them on a continuum from strict separation to accommodation, the guidelines would be as follows:

1. *Complete Separation of Church and State.* The Madison-Jefferson-Rutledge position is that the wall of separation is high and any accommodation, however insignificant it might seem, would be the beginning of a serious breach in the wall. Madison stated:

   > ...[I]t is proper to take alarm at the first experiment on our liberties.... Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christianity, in exclusion of all other Sects?.... Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yielded to the evidence which has convinced us.
   > (from *Memorial and Remonstrance Against Religious Assessments*, (1785))

   Jefferson's position has already been quoted. Supreme Court Justice Wiley B. Rutledge wrote:

   > Two great drives are constantly in motion to abridge, in the name of education, the complete division of religion and civil authority which our forefathers made. One is to introduce religious education and observances into the public schools. The other, to obtain public funds for the aid and support of various private religious schools.... In my opinion, both avenues were closed by the Constitution. Neither should be opened by this Court.
   > *Everson v. Board of Education*, 330 U.S. 15-16 (1947)

2. *Child Benefit Theory, 1930.* State aid of some kinds to private, parochial schools is permissible as long as it is a benefit to the child and not an aid to religion. (This theory has been used less often in the past two decades)
3. *The Neutrality Doctrine or the Lemon Test, 1971.* Gov-

ernment must be neutral and can neither aid nor hinder religion. A three-prong test helps to determine if a challenged piece of legislation is neutral and if the neutrality can be maintained. If the legislation or action fails any of the three parts or prongs, it is then in violation of the Establishment Clause.

1. The legislative *purpose* must be secular (non-religious).
2. The primary *effect* must not advance nor hinder religion.
3. There must not be *excessive government entanglement* with religion.

4. *Endorsement Test, 1984.* The justices of the Supreme Court have not been happy with the Lemon Test, particularly Justice O'Connor, because they believe it does not take into consideration the intentions behind institutional endorsement or disapproval of religion. In an attempt to refine the earlier principle of primary purpose or effect, the court under this endorsement test examines the government's purpose and effect. Is the purpose of the government's legislation or action to endorse religion? Does its legislation or actions convey or attempt "to convey a message of endorsement that religion or a particular religious belief is favored or preferred"? If the answer to either question is yes, it violates the Establishment Clause. (M. Johnson, "School Prayer and the Constitution," Maryland L. Rev. 1018-1044, Fall 1989)
5. *Accommodation.* Church and state are in partnership in fostering good citizenship. Legislation can accommodate both church and state as long as it shows no preference for one religion over another. This includes the use of school facilities for religious purposes under certain conditions.

Student Handout 2

1. *Minersville School District v. Gobitis*, 310 U.S. 586 (1940). The local board of education of the public schools of Minersville, Pennsylvania, required both teachers and pupils to participate in saluting the national flag as part of a daily school exercise. The Gobitis family members were Jehovah's Witnesses for whom the Bible is the supreme authority and saluting the flag is forbidden by their religion. Lillian and William Gobitis, ages 12 and 10, were expelled from school for refusing to salute the flag. The Gobitis family sued, claiming that their right of religious freedom was violated under the Freedom of Religion Clause of the First Amendment.
2. *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943). The West Virginia Board of Education adopted a resolution making the salute to the flag "a regular part of the program of activities in the public schools." All teachers and pupils were required to participate. Failure to do so was considered insubordination or disobedience. Student disobedience could result in expulsion and possible prosecution for the parents or guardians. Again, Jehovah's Witnesses refused to obey the flag salute on the grounds that their religious beliefs forbade them to bow down or to serve "graven images" such as the flag. The children were expelled and state officials threatened to send the children to reformatories for juvenile delinquents. Their parents were prosecuted. The families filed suit saying that their freedom of religion had been violated.
3. *Engel v. Vitale*, 370 U.S. 421 (1962). The New York State Board of Regents adopted a brief prayer which was to be repeated voluntarily by students at the beginning of each school day. The prayer read, "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country." The students who did not wish to participate could remain silent or leave the room. The parents of 10 students in New Hyde Park, N.Y. brought suit. They claimed that the prayer conflicted with their religious beliefs and practices and, thus, was a violation of their rights of religious freedom.
4. *School District of Abington Township v. Schempp; Murray v. Curlett*, 374 U.S. 203, 83 S.Ct. 1560 (1963); these two cases were considered together by the Supreme Court. The first case concerned a Pennsylvania statute requiring the reading of at least 10 verses from the Bible each day during the morning announcement time. It was broadcast into the classrooms through the intercom. This was followed by students joining in to recite the Lord's Prayer and the pledge to the flag. If parents requested that their students be excused, the students did not have to participate. The Schempp family held that certain literal Bible readings were against their religious beliefs as Unitarians and brought suit to stop the readings. The second case dealt with a suit filed by two atheists, Madelyn Murray and her son, William. Their position was that the daily religious exercise placed "a premium on belief as against non-belief and subjected their freedom of conscience to the rule of the majority." They asked that the readings be stopped because they violated their First Amendment right to not believe.
5. *Lemon v. Kurtzman*, 91 S.Ct. 2105 (1971). Because parochial schools were educating a significant number of students, several states passed laws authorizing salary supplements to teachers to be paid out of public school monies. A Pennsylvania law allowed reimbursement to non-public schools for salaries, instructional materials, and textbooks on the condition that the courses and materials were secular (non-religious) and similar to courses offered in the public school curriculum. It affected around 20% of the students in the state. The Rhode Island law allowed a salary supplement to non-public school teachers who were required to teach only secular subjects. This law benefited in effect only Roman Catholic schools.
6. *Stone v. Graham*, 101 S.Ct. 192 (1980). The Kentucky state legislature passed a law in 1978 requiring the placing of the Ten Commandments in public school classrooms. Copies posted were purchased with private contributions. At the bottom of each copy was the following: "The secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the common law of the United States." The Kentucky law was challenged, and the case made its way to the Supreme Court.
7. *McLean v. The Arkansas Board of Education*, 723 F.2d 45 (1982). On March 19, 1981, the Governor of Arkansas signed into law the "Balanced Treatment for Creation-Science and Evolution-Science Act." Its essential mandate was stated in its first sentence: "Public schools within this State shall give balanced treatment to

Student Handout 3

WORKSHEET FOR CASE STUDY

	Historical Setting	**Constitutional Issue** Free Expression or Establishment?	Is It a **Violation** of the Religion Clause?	Your **Decision** and **Reasoning**
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

creation-science and to evolution science." A suit was filed on May 27, 1981, in federal district court challenging the constitutionality of this act. How did the federal court rule?

8. *Wallace v. Jaffree*, 105 S. Ct. 2479 (1985). Because of earlier rulings removing institutionalized prayer from the public schools, the state of Alabama chose to remedy this through three statutes. The first, passed in 1978, authorized a one-minute period of silence "for meditation" in all public schools. It was amended in 1981 authorizing a period of silence "for mediation or voluntary prayer," and a third in 1982 gave authority to the teacher to lead students who were willing to participate in a prayer, "Almighty God...the Creator and Supreme Judge of the world." All three laws were challenged by Ishmael Jaffree. His seven-year-old, the plaintiff, had been led by the classroom teacher in "voluntary" prayer which was said outloud and in unison. Jaffree had repeatedly requested but without success that the "devotional services" be stopped. A suit was filed and the case made its way up to the Supreme Court.

9. *Edwards v. Aguillard*, 107 S.Ct. 2573 (1987). Louisiana passed a law in 1981 mandating that schools teach creation science if they also taught evolution. The law defined creation science as "the scientific evidences for (creation or evolution) and inferences from those scientific evidences." It contained no overtly religious reference.

10. *Mergens v. Board of Education of Westside Community Schools*, 58 U.S.L.W. 4720 (1990). Congress passed the Equal Access Act in 1984. The purpose of the act was to keep schools from discriminating against student groups on the basis of religious, political, or philosophical reasons. The target for this law was the public school receiving federal funds and maintaining a "limited open forum." A school has a "limited open forum" as soon as it allows the school facilities to be used by one or more noncurriculum related groups during noninstructional time (outside of regular school hours). Student groups meeting for reasons related to school curriculum are not affected by this act. The Westside School System in Omaha, Nebraska, was sued when a student, Bridget Mergens, asked the principal to allow a Christian student group to meet at the school as an extracurricular club. The club was to be equal with the other clubs but would not have a faculty sponsor. School officials denied her request. The school said it had not created a "limited open forum" for student clubs, there was to be no faculty sponsor, and as a religious club it would violate the First Amendment Religion Clause. The case went before the Supreme Court.

Student Handout 4

THE DECISIONS

1. *Minersville School District v. Gobitis*, 310 U.S. 585 (1940) (free exercise)
The Supreme Court voted 8-1 to uphold the requirement to salute the flag. The Court said that freedom of religion is not absolute. Compromises may be necessary. Religious liberty may have to give way to political necessity and authority. But that authority cannot be used directly to promote or restrict religion. "Certainly the affirmative pursuit of one's convictions about the ultimate mystery of the universe and man's relation to it is placed beyond the reach of the law....." However, the decision continues, "The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities." To exempt the Gobitis children from the salute "might cause doubts in the mind of other children which would themselves weaken the effect of the exercise."

2. *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943) (free exercise)
By a 6-3 vote the Supreme Court reversed *Gobitis*. The majority opinion stated that the action of the local authorities in forcing the flag salute and pledge went beyond the constitutional limits of their power and "invades the sphere of intellect and spirit which is the purpose of the First Amendment to our Constitution to reserve from all official control...freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test...is the right to differ as to things that touch the heart of the existing order." The concluding words of Justice Robert A. Jackson have become some of the most quoted passages in constitutional law:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

3. *Engel v. Vitale*, 370 U.S. 421 (1962) (establishment)
The Supreme Court, in a 6-1 ruling (two justices did not take part), struck down the compulsory prayer as a violation of the Establishment Clause. The essence of the majority opinion was that it was not the business of the Board of Regents or "...government to compose official prayers for any group of the American people to recite as part of a religious program carried on by government." Even though it was voluntary, it was still a violation. Justice Hugo Black wrote, "When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain."

4. *School District of Abington Township v. Schempp; Curray v. Curlett*, 374 U.S. 203, 83 S.Ct. 1560 (1963) (establishment and free exercise)
The law was struck down by an 8-1 vote as a constitutional violation of both Religion Clauses. Justice Tom C. Clark wrote:

> The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality.

The question was raised that it had the effect of permiting a "religion of secularism" to be established. Justice Clark continued:

> We do not agree, however, that this decision in any sense has that effect. In addition, it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the âBible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment....

5. *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105 (1971) (establishment)
   Both laws were struck down by unanimous votes. Chief Justice Warren Burger wrote the opinion which established what is called the Neutrality Doctrine or the "*Lemon* Test." The three-prong test determines violations of the Establishment Clause. If the legislation fails any of the three parts, it is unconstitutional. Aid to parochial schools must have (1) secular legislative purpose, and (2) a primary effect that neither advances nor inhibits religion. (3) Nor must it foster an excessive government entanglement with religion.

6. *Stone v. Graham*, 101 S. Ct. 192 (1980) (establishment)
   A 5-4 majority decision held the law to be a violation of the Establishment Clause. In applying the *Lemon* guidelines the law failed on the first point. The majority opinion stated:

   > The pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature. The Ten Commandments is undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact. The Commandments do not confine themselves to arguably secular matters.... Rather, the first part...concerns the religious duties of believers:...

   Mere posting does not serve an educational purpose. Instead, it might encourage students to think that the schools have come down on the side of religion; whereas, they must remain neutral. However, the Court did state, "[T]he Bible may constitutionally be used in appropriate study of history, civilization, ethics, comparative religion, or the like."

7. *McLean v. The Arkansas Board of Education*, 723 F.2d 45 (1982). (establishment)
   The act was overturned as an unconstitutional violation of the Establishment Clause. Using the test in *Lemon v. Kurtzman*, it failed each of the three tests. It was found that in evaluating the legislative purpose, the creationist movement is closely identified with the Fundamentalist view of the origin of earth and life, thus failing the first prong of the test. "Both the concepts and wording...convey an inescapable religiosity." The primary effect was found to be the promotion of Christianity, thus failing the second test. The Court stated that Creation Science does not fit the definition of scientific theory, and it "fails to fit the more general descriptions of `what scientists think and what scientists do.'" It failed the final test as well because of unnecessary government entanglement. It would require State officials "...to monitor classroom discussions in order to uphold the Act's prohibition against religious instruction [and] will necessarily involve administration in questions concerning religion." The decision was from the United States District Court in Arkansas. It was not appealed.

8. *Wallace v. Jaffree*, 105 S.Ct. 2479 (1985). (establishment)
   The Supreme Court struck down the 1981 statute providing for a moment of silence for "meditation or voluntary prayer" as a violation of the Establishment Clause. However, the Court did not rule against the 1978 one-minute period of silence "for meditation." By applying the *Lemon* test to the 1981 and 1982 statutes, they failed the *Lemon* test. The sponsor of the bill that had become public law had included a statement in the legislative record that clearly indicated that this was "an effort to return voluntary prayer" to the public schools. There was no evidence presented that it had any other than a religious purpose. The 1978 Alabama law, allowing for a moment of silence for "meditation," stands. At least 25 states have laws mandating moments of silence in public school classrooms. If any are found to have a religious rather than a secular purpose, upon challenge, they may very well be struck down.

9. *Edwards v. Aguillard*, 482 U.S. 578, 107 S.Ct. 2573 (1987). (establishment)
   In a 7-2 decision, the Court ruled that Alabama's "balanced treatment" law lacked a clear secular purpose and violated the Establishment Clause:

   > The Louisiana Creationism Act advances a religious doctrine by requiring either the banishment of the theory of evolution from public school classrooms or the presentation of a religious viewpoint that rejects evolution in its entirety. The act violates the Establishment Clause because it seeks to employ the symbolic and financial support of the government to achieve a religious purpose.

10. *Mergens v. Board of Education of Westside Community Schools*, 58 U.S.L.W. 4720 (1990) (establishment)
    The Equal Access Act, it was concluded by the Court, did not violate the Establishment Clause and is constitutional. Therefore, in an 8-1 decision, the Court ruled that Westside High School had violated the Act by denying Mergen's request. As soon as a school allows even one noncurriculum related group to meet on the school premises during noninstructional time, the school has a "limited open forum." The school is then obligated to provide equal access to any "noncurriculum related student group" which makes such a request. For a student group to be related to the school's curriculum, it must satisfy one of four requirements set down by the Court: (1) the subject matter is actually taught or will soon be taught in a regularly offered course (an example would be a French or Latin Club); (2) the subject matter of the group concerns the body of courses as a whole; (3) participation in the group is required for a particular course (marching band, for example); or (4) participation in the group results in academic credit (orchestra or drama performances, etc.)

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Freedom of Religion

The Nature of Religious Freedom/Middle

David T. Naylor

UPI/Bettmann Newsphotos

Background

The quest for and appreciation of religious freedom have deed roots in the history of America. Religious intolerance and oppression have afflicted humankind for centuries before and since the founding of this country. Many people have come to our shores in search of religious freedom. Many others living here have enjoyed the sweet taste of its fruits. But America's experience with religious freedom has not been without its problems, struggles and costs. Periods of tension, conflict and coercion have had to be confronted and overcome.

Today, the First Amendment's guarantees of separation of church and state and religious freedom are among our most important and treasured rights. They have done much to promote religious diversity, understanding and independence. But the struggle is not yet over. These rights are not self-executing. Their realization depends heavily on an informed and committed people and an enlightened and courageous judiciary.

The ABA's poster on religious freedom provides an excellent opportunity for middle level students to begin a series of lessons reflecting on the meaning and importance of religious freedom. This lesson is intended to initiate such a unit. It uses the poster to aid students in exploring the nature of religious diversity and its implications. It is assumed that in subsequent lessons students will encounter specific historical and contemporaneous situations requiring the balancing of the rights and needs of individuals with those of the society at large. In this way, students will acquire a deeper understanding and appreciation of the First Amendment and how it guarantees religious freedom.

Time to Complete

Two class periods

Day 1

1. Begin by having students examine the poster "The Bill of Rights guarantees religious freedom...."
   a. Display the poster in a prominent place in the room.
   b. Divide the class into groups of four students each. Assign the following roles to the students in each group:
   Communicator: Responsible for reporting the group's findings. Must check with others to ensure that what is to be said accurately reflects the group's views.
   Recorder: Responsible for writing down an accurate account of what was said in the group. Must check with others to ensure that all important points have been recorded.
   Manager: Responsible for ensuring that all members of the group understand what they need to do; also keeps each member involved and on task.
   Timer: Responsible for keeping the group aware of the amount of time available to complete a task.
   c. Give each group a photocopy of the poster. Instruct students to focus only on the pictorial portion of the poster. Ask them to identify what is depicted, including as much detail about the person and the scene as they can. Give students three (or five) minutes to do this.
   d. When groups finish, call on the "communicators" to share findings. Record responses on the chalkboard or newsprint. First have communicators identify what is specifically shown in the scene (e.g., a man wearing a

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hat, with a beard, wearing dark clothing, two horses and two buggies, farmland). Next, have the communicators share inferences about the scene (e.g., an Amish man in a rural area).

2. Confirm that the scene depicts an Amish man. Then write or display the following unfinished statement: "When I think of the Amish, I think of...." Use this to explore what students know about the Amish.
   a. Keep students in their groups. Give the groups five to seven minutes to list as many responses to the statement as possible.
   b. Call on the communicators of the groups to share one or two responses. Record them on the chalkboard or newsprint.
   c. Briefly discuss student responses, giving individual students the opportunity to share any personal knowledge of or experience with the Amish.
   d. Analyze responses, pointing out how the responses could be clustered (e.g., responses about religion, dress, lifestyle, areas inhabited, beliefs). [Note: As an alternative, give the groups an additional three to five minutes to develop categories. Then have groups share their categories and the reasoning for them.]
   e. Conclude this sequence by discussing the Amish lifestyle, pointing out the integral role that Amish religious beliefs play in shaping their way of life (e.g., why they dress as they do, why they reject motor vehicles and rely instead on horse-drawn vehicles, why they do not use electricity).
3. Focus student attention on the nature and range of religious affiliations in the United States.
   a. With students still in their groups, give them five minutes to prepare a list of as many different religions and religious denominations found in the U.S. as they can. Have students circle those found in their community or area.
   b. When finished, call on the communicators of the groups to share a response. Record responses on the chalkboard or newsprint. Clarify and discuss responses. Highlight the number of different religious groups found in the area.
   c. Supplement student responses with numerical data to show the range and prevalence of religious groups in the United States. Use an almanac, newspaper or magazine report, or other source to obtain this information. (Note: A particularly interesting study is *The National Survey of Religious Identifications*, 1989-90 conducted by the City University of New York (CUNY) Graduate School and University Center. It is based on telephone interviews with 113,000 Americans and estimates how persons 18 or over identify their religious affiliation. The results of this study were reported by the Associated Press in April 1991 and were widely published in newspapers across the country; the box "Religious Affiliations" summarizes the results of the survey). Point out that while Americans are overwhelmingly Christian, there are many denominations within Christianity. Additionally, large numbers of Americans affiliate with various non-Christian religions (e.g., Judaism, Islam, Buddhism, Hinduism) or with no religion at all.

Religious Affiliations in the U.S.

Christian	86.5%
— Roman Catholic: 26.2%	
— Protestant: 60.3%	
Other religions	4%
No religion	7.5%
Refused to answer	2%

Source: The National Survey of Religious Identifications, 1989-90, CUNY Graduate School and University Center.

Day 2

1. Have students focus on the meaning of the printed portion of the poster.
   a. Write "similarities" on one side of the chalkboard and "differences" on another side.
   b. Within a large group format, ask students to indicate examples of similarities among the various religious groups found in the United States (e.g., many share the same holidays, believe in the Bible, and follow similar rituals, such as being baptized or repeating the Lord's Prayer). List responses in the "similarities" column.
   c. Next, ask students to indicate examples of differences among the various religious groups found in the United States (e.g., different holidays and holy days, different holy books or versions of the Bible, different religious leaders, different rules and rituals). List responses in the "differences" column.
   d. Direct student attention to the written part of the poster. Using a transparency or newsprint, display the following:

      "We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma."

      (From the majority opinion in the 1952 U.S. Supreme Court case of *Zorach v. Clauson*, written by Mr. Justice William O. Douglas.)

      Elicit student interpretations of the meaning of the words on the poster and this excerpt from a Supreme Court decision.
   e. Conclude by asking students to identify examples of religious freedom that people in the United States enjoy (e.g., to be religious or not, to choose which particular religion to join, to follow the practices of one's religion of choice). Have students speculate on how different things might be if the Constitution did not guarantee the freedom of religion.

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Freedom of Religion

Freedom and Tolerance/Elementary

Arlene F. Gallagher

Holly Pribble

"We see things not as they are, but as we are."
— The Talmud

The First Amendment is about freedoms but, perhaps even more important, it is about tolerance of others enjoying their freedoms. We see things from our own perspective and when confronted with something quite different it is natural to think that the familiar way is right or correct. This applies to the food we eat as well as to religious beliefs. Learning about differences helps to develop toleration. The focus of this article is to suggest ways that elementary students can learn about different religions. Holidays are special opportunities to increase children's knowledge about other beliefs and to expose them to other customs. While schools may avoid celebrating those holidays that have strong religious overtones, it is difficult to find a holiday that does not have some religious origins. The first activity introduces the religion clauses in the First Amendment through holidays.

Holidays We Celebrate and Why

OBJECTIVE

This activity will have students analyze holidays that they celebrate and holidays that others celebrate while sorting them into categories of religious origin vs. non-religious origin.

PROCEDURE

Have the students brainstorm holidays that they celebrate in their families and holidays that are celebrated in the United States. The following thirty holidays may be used to supplement the brainstormed list.

New Year's Day
Chinese New Year
Martin Luther King Day
Lincoln's Birthday
St. Valentine's Day
Presidents' Day
Washington's Birthday
St. Patrick's Day
Palm Sunday
Good Friday
First Day of Passover
Easter Sunday
Orthodox Easter
Earth Day
Secretaries Day
Mother's Day
Memorial Day
Flag Day
Father's Day
Independence Day
Labor Day
First Day of Rosh Hashana
Yom Kippur
Columbus Day
Halloween
Election Day
Veterans Day
Thanksgiving Day
First Day of Hanukkah
Christmas Day
International Children's Day

Discuss the origin and meaning of each of these holidays briefly. The extensive bibliography will be helpful if the teacher or students don't have the information. Create a graph on the chalkboard with holidays on the left hand side and the students' names across the top. Have students fill in the boxes beside the holidays that they celebrate. Use the following questions to guide discussion.

- How does a holiday reflect what people think is important? Ask for specific examples.
- How would you feel if you were not permitted to celebrate a certain holiday that you have always recognized in your family?

Surveying the Community

OBJECTIVE

To have students make predictions about their community then gather data to test these hypothesis. Primary students can survey other classrooms while older students can survey their neighborhoods.

PROCEDURE

Choose one or more of the following questions. Ask your class to predict how they think most people will respond.

What is your favorite holiday?
Is this a holiday with religious origins or not?
How would you feel if the government made a law against your celebration of this day? What could you do about it?

Children's Literature and Activities on Freedom of Religion

All of the books listed below are currently in print. The grade levels indicated are not absolute because many books transcend categories. The allegorical quality of picture

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books makes them wonderful springboards for discussion by older students and young children love to hear books read aloud.

P=primary (grades 1, 2, 3)
I=intermediate (grades 4, 5, 6)
A=advanced (7, 8, 9)

Arrick, Fran. (1981) *Chernowitz*. New York: Bradbury. I & A

Bobby Cherno is tormented by an anti-Semitic bully in his class. Bobby has to wrestle with the problems of telling his parents, protecting himself, and his own desire for revenge. The theme of revenge as an unsatisfying and ineffective response to a bully.

Activity: Conduct a discussion about the difference between tattling and responsible reporting. Too often children do not report abusive treatment because they do not want to be labeled a tattletale. Make lists of incidents that fall under the tattling category and the responsible reporting category. Try to get the students to develop working definitions of each.

Blume, Judy. (1970) *Are You There, God? It's Me, Margaret*. New York: Bradbury. I

This is the story of a religion-conscious Margaret who has just moved to the suburbs. She joins a secret club of other girls in her class and must adhere to the rigid rules that they impose; peer group rules that are vitally important to children this age. Margaret is preoccupied with her physical maturation, and reaches a comfortable religious compromise.

Activity: Most fifth and sixth graders have probably read this book so teachers should have no trouble beginning a discussion about Margaret's secret club, the PTLs, and the rules imposed by it. Ask the children about secret clubs they have participated in, what the rules were, who was allowed to join. This discussion could be expanded into one about organizations that refuse to admit people on the basis of sex, race, religion, etc. When is this allowable? When is it inexcusable?

Clapp, Patricia. (1982). *The Witches Children: A Story of Salem*. New York: Lothrop, Lee & Shepard Books, 1982. Puffin Paperback, 1987. I & A

During the winter of 1692 a group of young girls begin to experience strange fits and visions. Some believe they have seen the devil and that they are being victimized by witches. This is the story of the witch-hunt trials in Salem, Massachusetts. There is no separation between church and state during this time.

Activity: Review the evidence that was permitted during the witchcraft trial. Find examples in the book of how that evidence was used to convict witches.

Cohen, Barbara. (1983). *Molly's Pilgrim*. New York: William Morrow Edition, 1983. Bantam Skylark Paperback Edition, 1990. P & I

Molly is teased by her classmates because of her imperfect English and old country ways. Her mother makes her a pilgrim doll dressed as a Russian peasant because she herself came to this country for religious freedom. When Molly brings the doll to school other students ridicule her until they learn about modern day pilgrims.

Activity: To celebrate the first paperback edition of this popular children's book, the publisher has produced an excellent teacher's guide with 18 activities such as the following:

"Help your students to make connections between *Molly's Pilgrim* and current events concerning modern-day pilgrims, for example, Vietnamese, Haitians, Russian Jews, Cubans, Koreans, Guatemalans, and others. Can they think of famous people, musicians, athletes, movie stars, or others, who may be considered modern-day pilgrims?" (from "A Teachers Guide to *Molly's Pilgrim*" by Barbara Brenner, available free of charge from Bantam Doubleday Dell, Education and Library Division LBW, 666 Fifth Avenue, New York, NY 10103)

Jones, Rebecca C. (1989). *The Believers*. New York: Knopf. YA

Eleven-year-old Tibby Tayler becomes involved with an unusual boy named Verl Milner and his warm, loving family. The Milners don't send their children to schools or doctors because they believe that prayer has the power to make miracles happen; they read only the Bible.

Activity: First have your students brainstorm a list of all of the religions they know. Then, using an almanac, have students make lists of the different religions in the world. The comparisons of the lists should be quite dramatic. Follow up this activity by making pie charts showing how many people in the world belong to different religions.

Yolen, Jane. (1981). *The Gift of Sarah Barker*. New York: Viking. A

In this story, religion governs all aspects of the character's behavior. There is no separation between governance and religion for members of the Shaker community in the late 1800s. This is also most unusual love story. Sarah and Abel are Shakers and because of this they are not allowed to speak or touch or even dream about one another.

Activity: The Shakers were a unique culture whose rules and customs provide a fascinating subject for older elementary children. Reconstruct the rules of Shaker life and discuss with the students how following these rules would change their lives.

Informational Books About Holidays and Religions

Adler, David. (1982). *A Picture Book of Passover*. New York: Holiday House. P & I

A simple and clear retelling of the Israelites' journey from slavery to freedom that includes the birth of Moses, the ten plagues, and the crossing of the Red Sea. Also included is a brief explanation of the Seder and other Passover holiday customs.

Bodker, Cecil. (1989). *Mary of Nazareth*. R&S Books, distributed by Farrar, Straus, & Giroux. New York. I

This story is told from the perspective of Mary and relates the events that bring her and Joseph to Bethlehem where the child, Jesus, is born. When they bring the generous gifts from the three wise men to the temple in Jerusalem they realize that their son is the one sought by King Herod.

Brown, Tricia. (1987). *Chinese New Year*. Photographs by Fran Ortiz. New York: Holt. P & I

The text and photographs depict the celebration of the Chinese New Year by Chinese Americans living in San Francisco's Chinatown.

Byran, Ashley. (1991). *All Night, All Day: A Child's*

First Book of African American Spirituals. Selected and illustrated by the author. New York: Atheneum. All ages

The color illustrations capture the spirit of these 20 spirituals selected from among the thousand that are known and sung by people in churches, schools, camps and clubs. A note at the end of the book provides some historical background.

Drucker, Malka. (1983). *Shabbat: A Peaceful Island*. Drawings by Brom Hoban. New York: Holiday House. I

Every Friday night, Jews anticipate sundown—the beginning of the Sabbath holiday. It is a time for rest, a kind of "peaceful island" in a busy week. The origins of the holiday, the customs celebrated in other countries as well as crafts, games and recipes are also included.

Eagle Walking Turtle. (1987). *Keepers of the Fire*. Santa Fe, New Mexico: Bear & Company. All ages

Inspired by the vision of Black Elk, an Oglala Sioux medicine man who lived at the turn of the century, this archetypal myth is about the journey of Blue Spotted Horse to the far ends of the earth to spread a message of peace and harmony.

Faber, Doris. (1991). *The Amish*. Illustrations by Michael Erkel. New York: Doubleday. I

This is an excellent treatment of the Amish people, their beliefs, their customs, and their interactions with non-Amish. The landmark Supreme Court case of 1972 which held 7-0 in favor of the Amish not having to send their children to public schools is very clearly presented including the background that led to the controversy.

Hoad, Abdul Latif Al. (1987). *Islam*. New York: The Bookwright Press. I

There are followers of Islam (Muslims) in almost every country in the world. They believe in Allah, one God, whose word was revealed to Muhammad, the Prophet, and preserved in the Koran. This book for young readers explains that Islam is a way of life in addition to being a belief. It is one in a series of books called Religions of the World. Other titles are: *Buddhism, Christianity, Judaism, Sikhism, and Hinduism*.

Obadiah. (1986). *I am a Rastafarian*. Photographs by Chris Fairclough. New York: Franklin Watts. P

Rastafari people can be found in many countries of the world although the movement first began in Jamaica in the 1920s. This small book covers the history, beliefs and practices of this religion in a way that makes it accessible to the young child. This is one of a series of titles in the My Heritage series that present religions to a young audience. Other titles are *I am an Anglican, I am a Buddhist, I am Greek Orthodox, I am a Hindu, I am a Jew, I am a Muslim, I am a Pentecostal, I am a Roman Catholic, I am a Sikh*.

Chaikin, Miriam. (1985). *Ask Another Question: The Story and Meaning of Passover*. Illustrated by Marvin Friedman. New York: Clarion. I & A

The Jewish holiday of Passover celebrates freedom for a group of people who have not always had it. For centuries they were subjected to slavery, prejudice and persecution. This book presents a vivid historical portrait of the first exodus when Moses led Jews from slavery to freedom along with a full description of the holiday.

Chaikin, Miriam. (1983). *Make Noise, Make Merry: The Story and Meaning of Purim*. Illustrated by Demi. New York: Clarion. I & A

This book is the story of how a government attempted to destroy a whole group of people because of their religion. Purim celebrates the rescue of the Jews of Persia (modern Iran) by the beloved and heroic Queen Ester in the fifth century B.C. While Purim is a minor Jewish holiday, it is the merriest and noisiest of the year.

Chaikin, Miriam. (1986). *Sound the Shofar*. Illustrated by Erika Weihs. New York: Clarion. I

Rosh Hashanah and Yom Kippur, the High Holy Days, mark the beginning of the year on the Jewish calendar. The main symbol of the holidays is the shofar, or ram's horn. It is sounded to announce the start of the new year and again ten days later to end the Yom Kippur fast.

Drucker, Malka. (1981). *Rosh Hashanah and Yom Kippur*. New York: Holiday House. I

The author covers the history, customs and meanings of these two High Holy Days, the most solemn days of the Jewish year. The book includes games, puzzles and crafts.

Giblin, James Cross. (1985). *The Truth About Santa Claus*. Illustrated with photographs and prints. New York: Crowell. I

There have been many variations on the Santa Claus theme, some religious and some non-religious. This book is rich with historical anecdotes as the author traces the centuries-long growth of this symbol of cheer and generosity.

Pettennuzzo, Brenda. (1986). *I am a Pentecostal*. New York: Franklin Watts. I

Text and photographs briefly explain the practices and beliefs of people who are members of the Pentecostal church. The book gives a view of an English family's daily life in addition to their religious practices.

Pettennuzzo, Brenda. (1986). *I am a Roman Catholic*. New York: Franklin Watts. I

Miriam, who is enrolled in a Catholic primary school and attends a Catholic church, explains the tenets and rituals of her faith. Photographs add to the book's appeal.

The Story of Hanukkah. (1989). Paintings by Ori Sherman, told by Amy Ehrlich. New York: Dial. P & I

This is the story of a people's courageous fight for religious freedom. In *The Four Questions*, (Dial, 1989) another book by the same author, Passover is explained with whimsical illustrations by Sharon Schwartz. Every year when Jewish families gather for the Passover holiday, the youngest child poses the question: Why is this night different from all other nights? This begins the Seder.

Winthrop, Elizabeth. (1985). *He is Risen: The Easter Story*. Illustrated by Charles Mikolaycak. New York: Holiday House. I

This is a retelling of the Last Supper, the trial, the crucifixion and the resurrection of Christ. It has been adapted from the Books of Matthew and Luke in the King James version of the Bible.

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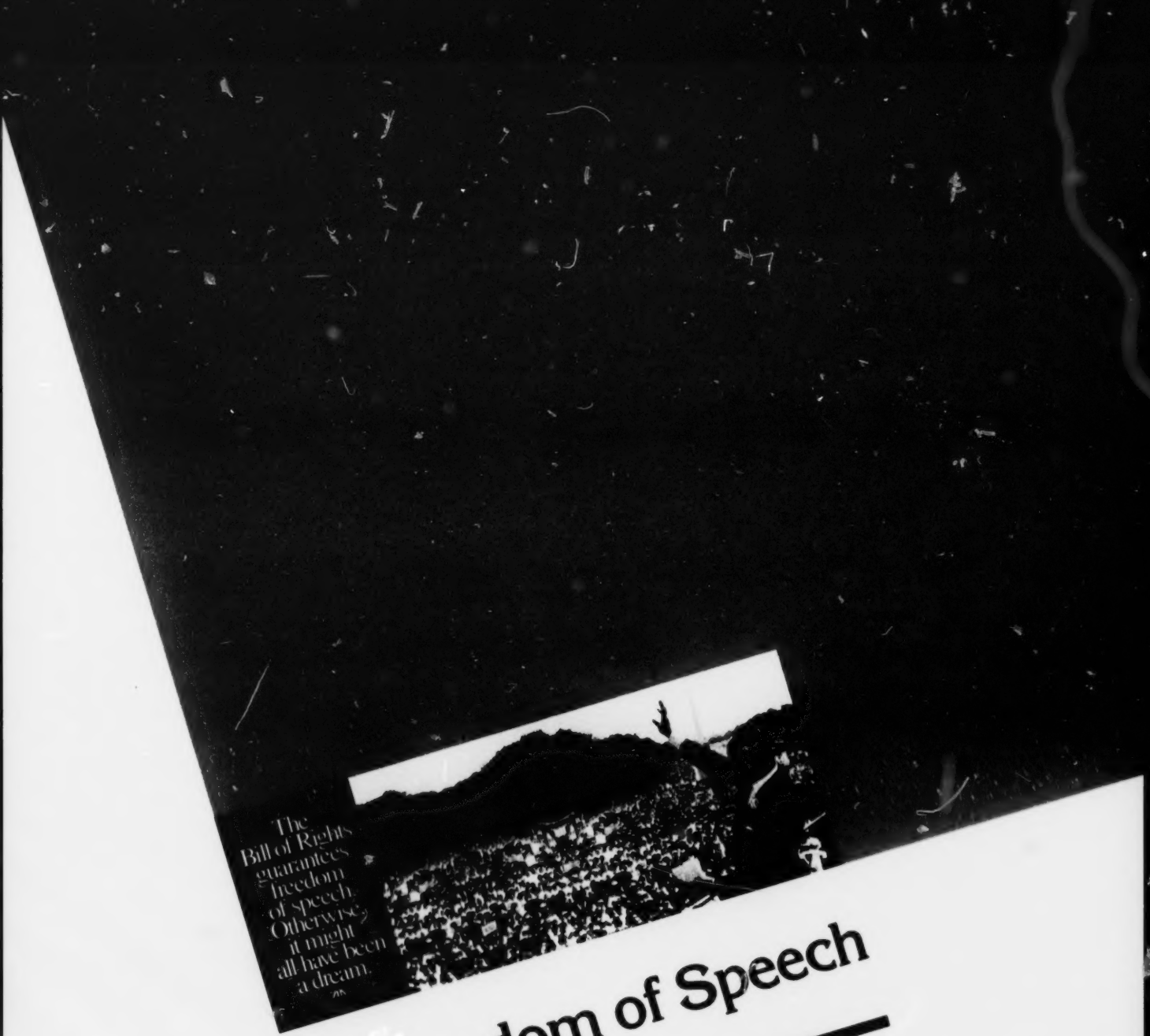

Freedom of Speech

Freedom of Speech

Making a Dream a Reality/Secondary — **Margaret Reilley**

Introduction

Each of us has a dream, a vision of how we would like the world to be. Dr. Martin Luther King, Jr.'s "I Have a Dream" speech touched many Americans deeply and its continuing impact demonstrates the importance of his dream in our lives. This lesson is designed to encourage students to not only articulate their dreams, but to take concrete steps towards achieving them. Freedom of speech allows us to express our dreams, but it is our ability and willingness to commit, to invest our time and energy to achieve our dreams that brings empowerment to our lives. This is a way to bridge the gap between ideology and reality that so many of us find frustrating. In a world with so many problems, students need to experience empowerments to know that they can make a difference; that their dreams spoken and shared can be turned into action and accomplishment.

Procedure

1. Begin by saying "Each of us has a dream, a vision of how we would like the world to be. Dr. Martin Luther King, Jr., expressed his dream in a powerfully moving speech he delivered at the Lincoln Memorial in Washington, D.C. on August 28, 1963 before an audience of over a quarter of a million people. The power of freedom of speech is reflected in the ability to articulate dreams and move people to action. Dr. King was a truly gifted individual in this regard."
2. Display the ABA poster and distribute to each student a copy of the edited version of Dr. King's "I Have a Dream" speech which appears on the opposite page. If possible, show a videotape of the speech. Read the speech aloud while the class reads it silently.
3. Have the class express in their own words what Dr. King's dream was.
4. Ask the class to brainstorm what "dreams" they have for a better America. In order to keep the class focused on the task, have them follow these rules of brainstorming: (1) no discussion (2) say anything (3) repetition is okay (4) no judgments (5) periods of silence are okay and (6) piggybacking is okay.
5. From the class list or their individual thoughts, tell the students to write their own "I Have a Dream" speech (Suggested length: two stanza minimum) which expresses their dream for America's future.
6. Divide the class into groups of between 3 and 5 students. Each student should read aloud their speech to their group. The group should select the two speeches they feel are "best." Allow more to be chosen if the group wishes to do so. The criteria should include, but not be limited to: the importance of the dream to the future of American society, the clarity of the dream, the willingness of the group to research the issue to outline possible steps to help achieve the dream, and the group's commitment to carrying out their plan to help achieve the dream.
7. Have each group read their best speeches to the entire class. Have a recorder list the dreams that the speeches mention.
8. Place the speeches around the poster on the bulletin board.
9. Each group should pick a speech and its dream which they will describe how they would go about achieving.

Before continuing, the class should receive the following guidelines for problem-solving.

I. Identify the problem.
   A. Define the problem. As a group, state clearly what the dream or dreams of your assigned speech are.
   B. Gather as much data as you can about the problem. Share with your group.

II. Generate ideas.
   A. Brainstorm and record the group's ideas as to how best to achieve the dream.
   B. Once your group has completed the list, ask clarifying questions about any idea that remains unclear.

III. Evaluate your ideas.
   A. Consider how you would implement the idea. Consider the consequences. Who might be helped? Who might be hurt?
   B. Is it possible to design a plan which will represent a win-win alternative?

IV. Plan how to achieve your dream. Select a project which your group can complete by the end of the six to eight weeks which will help to achieve your dream.

10. Allow the class time to complete problem-solving steps I-III mentioned above. In order to complete step IV, each group should be given a planing chart similar to the one on page 18. Deadlines for completion of the actual projects should be realistic and flexible.
11. Have each group present their plan to the entire class for further suggestions. Sample projects for the dream of a better environment could include beginning a recycling program for the school cafeteria; collecting aluminum cans throughout the neighborhood and donating the money to environmental causes and conducting environmental awareness activities in the school and community.
12. Groups should report back their results. Consider sharing your plan with others (e.g. the school newspaper, the local newspaper, school committee members, interested agencies, and legislators).

Conclusion

The project should be achievable within a defined time span and while in most cases it will not bring about the achievement of the overall dream – that may take decades – this activity will illustrate how we can begin, on a small

Excerpts from "I Have a Dream"

Five score years ago, a great American, in whose symbolic shadow we stand, signed the Emancipation Proclamation. This momentous decree came as a great beacon light of hope to millions of Negro slaves who had been seared in the flames of withering injustice. It came as a joyous daybreak to end the long night of captivity.

But one hundred years later, we must face the tragic fact that the Negro is still not free. One hundred years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination... One hundred years later, the Negro is still languished in the corners of American society and finds himself in exile in his own land...

There will be neither rest nor tranquility in America until the Negro is granted his citizenship rights. The whirlwinds of revolt will continue to shake the foundations of our nation until the bright day of justice emerges.

I say to you today, my friends, that in spite of the difficulties and frustrations of the moment I still have a dream. It is a dream deeply rooted in the American dream.

I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident: that all men are created equal."

I have a dream – that one day, on the red hills of Georgia the sons of former slaves and the sons of former slave owners will be able to sit together at the table of brotherhood.

I have a dream – that one day even the state of Mississippi, a desert state sweltering with the heat of injustice and oppression, will be transformed into an oasis of freedom and justice.

I have a dream – that my four little children will one day live in a nation where they will not be judged by the color of their skin but by content of their character. I have a dream today.

I have a dream that one day the state of Alabama, whose governor's lips are presently dripping with the words of interposition and nullification, will be transformed into a situation where little black boys and little black girls will be able to join hands with little white boys and white girls and walk together as sisters and brothers. I have a dream today.

I have a dream that one day every valley shall be exalted, every hill and mountain shall be made low, the rough places will be made plains, the crooked places will be made straight, and the glory of the Lord shall be revealed, all flesh shall see it together...

This is our hope. This is the faith that I go back to the South with. With this faith we will be able to hew out of the mountain of despair a stone of hope. With this faith we will be able to transform the jangling discords of our nation into a beautiful symphony of brotherhood. With this faith we will be able to work together, to pray together, to struggle together, to go to jail together, to stand up for freedom together, knowing that we will be free one day.

This will be the day when all of God's children will be able to sing with new meaning "My country 'tis of thee, sweet land of liberty... from every mountainside let freedom ring...."

And if America is to be a great nation this must become true. So let freedom ring from the prodigious hilltops of New Hampshire. Let freedom ring from the mighty mountains of New York. Let freedom ring from the heightening Alleghenies of Pennsylvania!

Let freedom ring from the snowcapped Rockies of Colorado!...

Let freedom ring from every hill and mole hill of Mississippi. From every mountainside, let freedom ring.

When we let freedom ring from every village and every hamlet, from every state and every city, we will be able to speed up that day when all of God's children, black men and white men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing in the words of the old Negro spiritual:

"Free at last,
Free at last.
Thank God Almighty
We are free at last!"

scale, to make a difference in our own communities. Subsequent activities can focus on the power of "constructive activism" and how to influence large scale change at the state, national, and international levels.

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Making Our Dream a Reality

Title of Project:

Group Planners:

Description of Project:

Resource Persons to Contact:

Time Chart: Make a time chart which indicates deadlines for each phase of the project including when phone calls, meetings, etc. should take place and who is responsible for completing the task.

Date	Description of the Task	Task Completed	Who is Responsible

Freedom of Speech

In Pursuit of a Dream/Middle — **David T. Naylor**

Background

"Free thought, free speech, freedom of organization and political action are cornerstones of American liberty." These are the words of Carrie Chapman Catt, the women's suffrage movement activist and founder of the League of Women Voters. They capture the importance of the First Amendment and its impact on American history. Without these rights, America would be a very different country today.

Throughout the history of this country, reformists, in pursuit of a dream, have capitalized on "free thought, free speech, freedom of organization and political action" to unleash forces of change that have forever shaped and directed the stream of American history. Along the way, they encountered many difficulties, including restrictive definitions of the meanings of Catt's four "cornerstones of American liberty." But, by displaying courage and persistence, these reformers have played significant roles in expanding our understanding of the fundamental concepts of liberty, justice and equality. To paraphrase the poster, without their vision and without the constitutional rights to pursue that vision, "it might all have been a dream."

In this lesson, a data retrieval chart is used as the organizing structure. Students work together to gather information about individuals involved in several major reform movements. Once gathered, the information is entered in the respective cells of the chart. The teacher uses summary, comparative, explanatory, and hypothetical questions to facilitate student understanding of similarities and differences among the several reform movements. As this happens, the importance of "free thought, free speech, freedom of organization and political action" becomes readily apparent.

Procedure

1. Display the poster along with the following words from Dr. Martin Luther King, Jr.'s "I Have a Dream" speech.

   > I say to you today, my friends, even though we face the difficulties of today and tomorrow, I still have a dream. It is a dream deeply rooted in the American dream. I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident: that all men are created equal . . . ."

   Use the "five Ws and one H" approach (i.e., who, what, where, when, why and how) to have students describe the scene, a scene that a number of students are likely to recognize. When discussing the "how" question, focus on the rights that are being exercised. [Note: This is a scene from the August 1963 march on Washington organized by several civil rights groups. The march sought to demonstrate support for the civil rights laws that President John F. Kennedy had proposed and to pressure Congress to pass them. More than 200,000 persons gathered in front of the Lincoln Memorial to hear Dr. King deliver his famous "I Have a Dream" speech.]

2. Use either of the following approaches to have students talk about some important and/or well-known social reformers and social reform movements.
   a. Ask students to think of some other famous Americans who were involved in seeking to reform or otherwise change conditions in this country. List responses on the chalkboard. Have students describe what each did. Then have them look for similarities among the names and arrange the names into groups or categories of reformers (e.g., abolitionists, women's suffrage, civil rights, anti-war, labor). OR
   b. Prepare a list of famous persons who have sought social reform. Give the list to students. Encourage them to use their textbooks to identify any persons on the list who are unfamiliar to them. Then ask students to describe what each person did. Follow this by having students look for similarities among the persons and arrange the names into groups or categories of reformers.
3. Construct a data retrieval chart. Select three or four major social reform movements as the vertical axis entries (i.e., that which is to be compared). Then choose several horizontal categories (i.e., the areas of comparison). [See the sample chart on the next page.]
4. Arrange students into pairs. Assign each pair to gather information about a particular reformer (e.g., Frederick Douglas – what he did and when he did it). Then use one of the following approaches:
   a. Have each pair of students turn in the written information it has collected. Enter that information in the respective cell(s) of the data retrieval chart. OR
   b. Make the data retrieval chart out of large sheets of paper. Post the chart on a wall. As each pair of students collects its information, have the students enter it on the chart.
5. When all of the information has been collected and entered in the data retrieval chart, ensure that students have access to the completed chart. Either give each student or each pair a personal copy or arrange students so each can easily read the large completed chart. Use the following questioning sequence:
   a. Begin by having students *summarize information within a single cell* of the chart (e.g., How did William Lloyd Garrison seek to end slavery?; In what period of time were Frederick Douglas, Harriet Tubman and William Lloyd Garrison active in the abolition movement?).
   b. Next, have students *compare information within two or more cells* (e.g., What techniques did the abolitionists use to attain their objective? How do those techniques compare to the ones used by those in the women's suffrage movement?)
   c. Then ask a question that requires students to *explain why a particular similarity or difference exists* (e.g., Why were many abolitionists supportive of the women's suffrage movement?). As much as possible,

REFORM MOVEMENTS	Persons Involved	What Was Sought	When Active	Process Used	Results Obtained
Abolition of Slavery	Frederick Douglas				
	Harriet Tubman				
	Wm. Lloyd Garrison				
Women's Suffrage	Elizabeth Cady Stanton				
	Susan B. Anthony				
	Carrie Chapman Catt				
Civil Rights	Martin Luther King, Jr.				
	Roy Wilkins				
	Stokely Carmichael				

ask questions that enable students to respond by using the information found in the chart.

d. Follow with *hypothetical questions* (e.g., What would have happened to each of these reform movements if the First Amendment had been repealed? or how would our lives be different if this reform movement had not succeeded?).

6. Conclude by having *students state generalizations* that summarize major points (e.g., "Freedom of speech, freedom to organize, and political action are necessary elements of a social reform movement."). Emphasize the relationship between the Bill of Rights and the degree of success enjoyed by these social reformers and reform movements.

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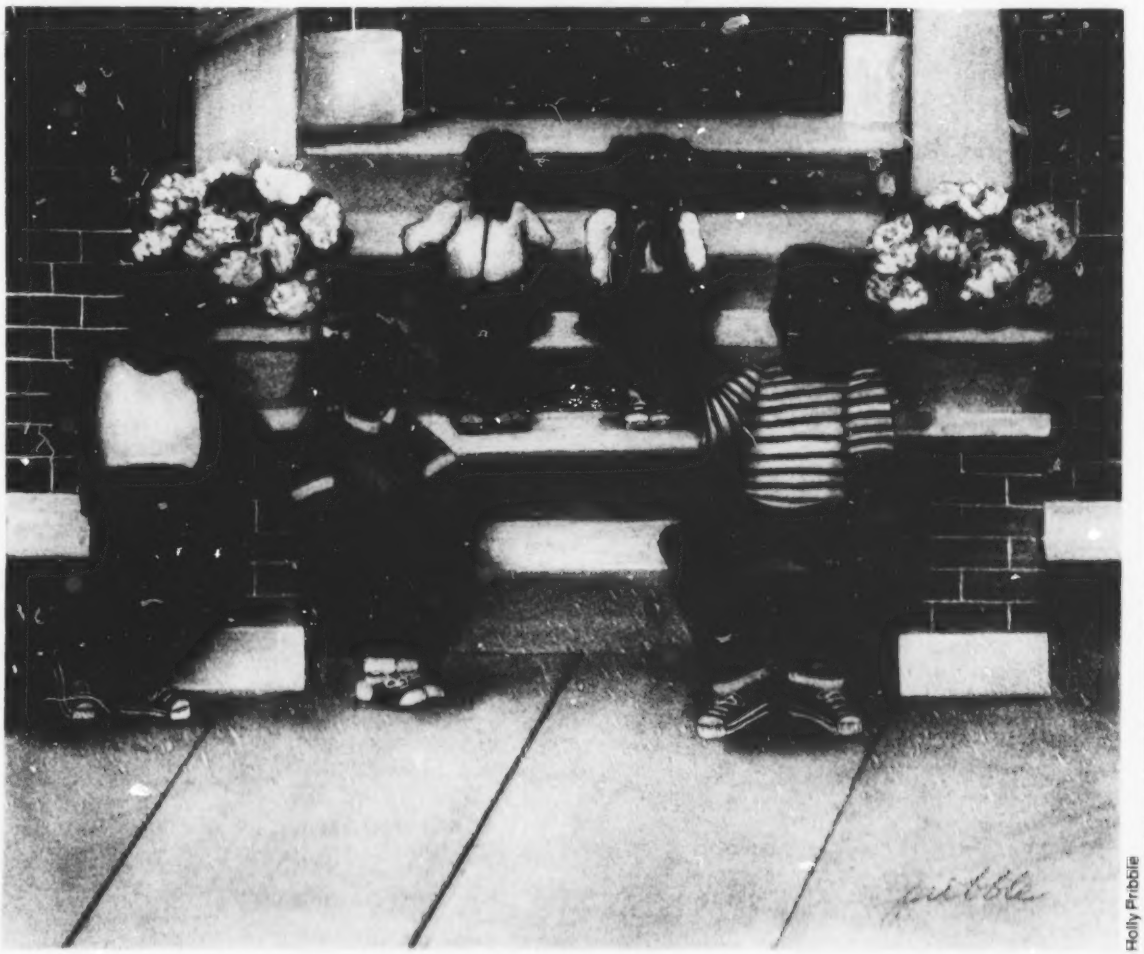
Freedom of Speech

Can a Speech Make a Difference?/Elementary Arlene F. Gallagher



Holly Pribbie

Introduction

In *Free at Last?*, perhaps the most recent treatment of the civil rights movement, Fred Powledge argues that it did not grow out of the dream of any one man or woman or even a small group of people or an organization but that the people who made up the movement were as diverse as America itself. In spite of this, Dr. Martin Luther King, Jr.'s "I Have a Dream" speech is recognized as one of the most powerful speeches made in this century. The main activity for this strategy involves students in a brief play that questions the power of words while having students use their own voices in a one act play and then create a scenario that answers the question: Can speech make a difference?

Purpose

To have students discuss the power of speech and research the impact of Dr. Martin Luther King, Jr.'s "I Have a Dream" speech.

Procedure

Introduce the play by reading the excerpt from the "I Have a Dream" speech out loud or have students read it silently. Then divide the class into groups of five and read the following play in a Readers Theatre format. No memorization is necessary; each person in the group simply becomes one of the five characters and reads that part.

The Excerpt

I have a dream that one day on the red hills of Georgia, the sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood . . . . I have a dream that my four little children will one day live in a nation where they will be judged not by the color of their skin, but by the content of their character . . . .

With this faith we will be able to transform the jangling discords of our nation into a beautiful symphony of brotherhood. With this faith we will . . . stand up for

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freedom together, knowing that we will be free one day.

This will be the day when all of God's children will be able to sing with new meaning "My country 'tis of thee, sweet land of liberty . . . from every mountainside let freedom ring . . . ."

Let freedom ring . . . Let it ring in every village and hamlet, from every state and every city, we will be able to join hands and sing in the words of the old Negro spiritual: "Free at last! Free at last! Thank God Almighty, we're free at last!"

THE DAY AFTER: A One Act Play

Place: A front stoop in Washington, D.C.

Time: It is August 29, 1963, the day after Dr. Martin Luther King, Jr. delivered his "I Have a Dream" speech. Lionel, Belinda, Two Bits, Uncle James, and Sarah are "hanging out" on the front stoop of the apartment building where they all live. James has a copy of the *New York Times* and has been reading the excerpt from Dr. King's "I Have a Dream" speech out loud to the other four. The play may begin with James reading the speech or the students may have copies to read ahead of time.

The Characters:

LIONEL is 12 years old and he does fairly well at school. Unfortunately, he is sometimes compared to his younger sister who can do math problems faster than him and can spell almost anything. He is a bit cynical about life and tends to take a pessimistic viewpoint.

BELINDA is Lionel's 8-year-old sister. She is very bright and has been put in the gifted and talented program at school. She likes the program because she was bored in the regular classroom but she hates being teased about it.

TWO BITS is 10 years old. He got his name because he often has something to say about everything but it's not usually very useful. He can be funny sometimes but mostly he talks to be noticed.

UNCLE JAMES is 17. He is really only an uncle to Lionel and Belinda but everyone calls him Uncle, partly because he is very tall. He hangs out with these younger kids because they look up to him and make him feel like a hero but also because he likes them.

SARAH is 9 years old. She always seems to be trying to fit with other kids both in and out of school. Her main problem seems to be that she tries too hard. Mostly she is ignored.

***

LIONEL:
The red hills of Georgia don't have anything to do with us.

UNCLE JAMES:
He meant that people everywhere would be able to sit down at the table of brotherhood.

LIONEL:
I doubt that. I can just see some people like Miss Keep-your-hands-off-my-magazines at the corner store sitting down at the table of brotherhood!

TWO BITS:
Yeah, no way Jose!

LIONEL:
So, King made a speech about dreaming. What's the big deal?

UNCLE JAMES:
The big deal is that over 200,000 people were there to hear it.

TWO BITS:
I heard 250,000 people were there.

SARAH:
My sister was there. She *loves* protest marches.

LIONEL:
I could make a better speech than that any day.

TWO BITS:
Speech! Get real. You can't even talk straight.

SARAH:
He can too talk. I've heard him plenty of times.

LIONEL:
Anyhow talk is cheap. Anyone can talk. What good does a lot of talking do for anyone?

UNCLE JAMES:
Well, there sure were a lot of people standing around listening.

LIONEL:
How do you know they were listening? The picture in the paper looked like party time to me. Probably just a lot of people drinking beer and smoking grass.

UNCLE JAMES:
Nope. People listened.

LIONEL:
How do you know?

UNCLE JAMES:
I *know* because I was there. They listened. There was some singing, too, but not during the speech.

SARAH:
What did they sing?

BELINDA:
Yeah, what did they sing?

UNCLE JAMES:
"We Shall Overcome" and other stuff.
(Sarah and Belinda start singing "We Shall Overcome")

TWO BITS:
Oh, no . . . just what we need – a chorus.
(Sarah keeps singing but Belinda stops to ask:)

BELINDA:
And was it like a party?
(Belinda stops to listen.)

UNCLE JAMES:
In some ways.

TWO BITS:
Oh, so there was a big party.

UNCLE JAMES:
Hey, people sang. People felt good. I guess you could call that a party. But they listened, too.

LIONEL:
Well, even if they did it ain't gonna make no difference to me. It's just a lot of talk.

BELINDA:
. . . *isn't* going to make any difference . . .

LIONEL:
Stop correcting me, Belinda. I can't believe I have to live with this.

UNCLE JAMES:
I'd make a bet on this speech making a difference.

LIONEL:
Put your money where your mouth is.

UNCLE JAMES:
Okay. I bet that people will still be talking about this speech when I'm twice the age I am now.

LIONEL:
How old are you?

UNCLE JAMES:
Seventeen good-looking-handsome-drive-'em-crazy years.

TWO BITS:
You forgot to mention humble.

LIONEL:
At least the 17 part is true. What year will it be when you're twice the age you are now?

BELINDA:
I can do that. I can do double numbers in my head. James will be 34.

LIONEL:
And thank you Miss Gifted and Talented. What a show off. Besides, I asked what year it will be not how old James will be.

BELINDA:
The year will be 1991.

LIONEL:
I hate having this smart sister around me. Why don't you play with dolls the way you're supposed to.

TWO BITS:
Yeah, why don't you.

BELINDA:
Because I don't feel like it. And why don't you quit butting in. No wonder you're called Two Bits.

UNCLE JAMES:
Okay. So we all meet right here on August 29, 1991 to see who wins.

LIONEL:
What do we bet and how will we know who wins?

UNCLE JAMES:
Loser pays for food for everyone . . . as much as they can eat in one sitting.

BELINDA:
But how will we know who won?

UNCLE JAMES:
The way we'll know is this: We do a survey. Right from this street corner. We come here at 12 o'clock sharp and we start asking people if they know who Dr. Martin Luther King, Jr. is and if he ever made a famous speech about dreams. If 8 out of every 10 people we ask say yes and can tell at least two things that he talked about then I win. Fair?

LIONEL:
Fair to me, not fair to you. There's no way anyone is going to remember some dreamy speech 17 years from now. You better start saving your money, James. I got me a very big appetite.

UNCLE JAMES:
Oh, yeah? Compared to me you eat like a little old birdy. You haven't seen your Uncle James get his mouth around some ribs . . . and follow up with a few quarts of ice cream. You better get a good-paying job, Luther.

The End

Follow-Up Discussion Questions

First, ask the students to tell how it felt to play the different roles. Ask if they felt the other players in their group were realistic. Can anyone think they could imagine what the rest of the life of their character would be like?

Can speech make a difference? Ask the students to think of examples when speech has had a powerful effect such as mobilizing people to action. What did Dr. King mean when he used the words "to transform the jangling discords of our nation into a beautiful symphony of brotherhood"? What were the jangling discords? Why did he choose a symphony for the metaphor? Brainstorm other possible metaphors. Discuss the "I Have a Dream" excerpt specifically and ask whether they think it has made a difference.

Extending the Activity

SURVEYS

Have students conduct surveys like the one that the characters are going to do. Younger children can conduct surveys with their families and in other classrooms while older students can go out into their neighborhoods. The results of the survey can be tallied and discussed.

CROSS GRADE ACTIVITY

Older students can perform this one act play for younger students then lead a discussion about Dr. Martin Luther King, Jr., freedom of speech, and the Bill of Rights. This is particularly effective if the younger students get to "talk with the actors."

Seventeen Years Later: Continuing the Dream

FLESHING OUT THE CHARACTERS

Students may work in their original groups of five, or form new groups, to make a list of questions on information they want on the five characters in the play. Groups may create new characters or delete some if they don't want to use all five. The following questions should help the groups get started: What kind of a family does he or she live in? What is school like? Does anyone have an after school job? What does this character *dream* about? What will this person be

like 17 years later? Students should create the answers for these and their own questions. This writing activity could be done over a period of days by having students keep individual journals for their characters. For example, an event could be selected that happened after the historic march on Washington and each character could write his or her reactions to the event. Remind them that the ages of the characters would, of course, change as time passes.

SIGNIFICANT EVENTS

Brainstorm significant events that have happened since August of 1963. The following should get the class started:

- The death of President John F. Kennedy . . . November 22, 1963
- The Vietnam War
- Nobel Peace Prize awarded to Dr. King in 1964
- Dr. King's assassination on April 4, 1968
- Dr. Martin Luther King Day . . . third Monday of January

WRITING IMAGINATIVE BIOGRAPHIES

Using the questions and the significant events, have each student write a short imaginative biography about the characters they played. Have this done independently then have them regroup and share the biographies. Using the material each one has imagined, have the group create the second act, 17 years later. They should feel free to add or change the characters in any way they wish, drawing from their journals, biographies or doing research from other sources.

Additional Resources

FOR TEACHERS

Powledge, Fred. (1991). *Free at Last? The Civil Rights Movement and the People Who Made It.* Boston: Little Brown and Company.

This book traces the dramatic progress of the movement establishing its beginning with the May 17, 1954 Supreme Court school desegregation decision to the late sixties claiming that it completely lost its original flavor by the time of the April 1968 murder of Dr. Martin Luther King. The author acknowledges that much that is the civil rights movement started before and continued after these dates but these parameters serve the purpose of this book. More than a chronicle of events, the voices of those who lived and acted during this time are presented.

Albert, Peter J. and Ronald Hoffman, eds. (1990). *We Shall Overcome: Martin Luther King, Jr. and the Black Struggle for Freedom.* Published by Pantheon Books in cooperation with the United States Capitol Historical Society.

In this book, America's leading scholars and activists from civil rights years speak on a range of experiences from this era.

Seeger, Pete and Bob Reiser. (1989). *Everybody Says Freedom: A History of the Civil Rights Movement in Songs and Pictures.* New York: W.W. Norton Company.

This is an excellent resource with many photographs, songs, anecdotes and profiles of individuals who gave much of themselves to the civil rights movement.

FOR STUDENTS

P = primary (grades 1, 2, 3)
I = intermediate (grades 4, 5, 6)
A = advanced (7, 8, 9)

Adler, David A. (1986). *Martin Luther King, Jr. Free at Last.* New York: Holiday House. I

This is a short (48 pages) informative biography for intermediate grade readers.

Adler, David A. (1989). *A Picture Book of Martin Luther King, Jr.* Illustrated by Robert Casilla. New York: Holiday House. P

Attractive full-color drawings make this an effective read-aloud with any group of students.

Darby, Jean. (1990). *Martin Luther King, Jr.* Minneapolis: Lerner Publications. I & A

The author captures King's spirit and leads the reader through the dramatic events of his life which coincided with the events of the civil rights movement.

McKissack, Patricia and Frederick. (1990). *W.E.B. DuBois.* New York: Franklin Watts. A

W.E.B. DuBois' career spanned from the 1890s to the 1960s. He founded the short-lived Niagara Movement in 1905 to advance the cause of civil rights and later helped found the National Association for the Advancement of Colored People. His death was announced at the historic march on Washington on August 28, 1963. Few then realized how much he had done to bring America to that day.

McKissack, Patricia and Frederick. (1991). *Martin Luther King, Jr. Man of Peace.* Hillside, NJ: Enslow. P

One of a series, *Great African Americans*, this simple text and illustrations describe the life and accomplishments of Dr. King. P

Taylor, Mildred D. (1990). *The Road to Memphis.* New York: Dial. A

Cassie Logan is finishing high school in 1941 in Jackson, Mississippi when a black friend, sadistically teased by white boys, injures one of them with a tire iron. Cassie has to help him flee from the state for his safety.

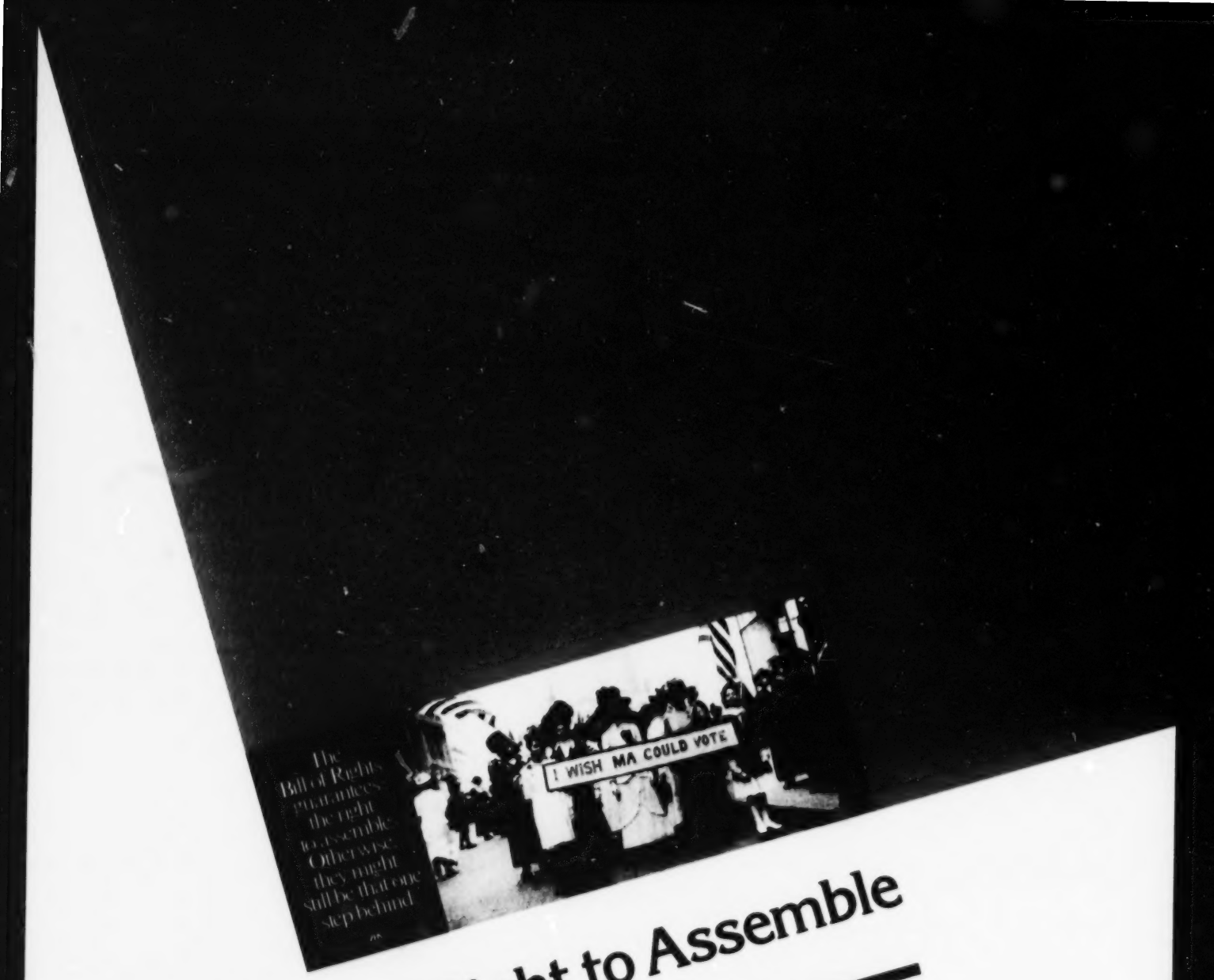
Tate, Eleanora E. *Thank You, Dr. Martin Luther King, Jr.!* (1990). New York: Franklin Watts. I & A

Mary Louise didn't want to be black and she didn't want to be the narrator for the Black History segment at President's Month at school. She longs to be friends with Brandy and have the same long blond hair. When the storytellers come to school her life is changed as she realizes who her true friends are and what a friend is worth.

Turner, Glennette Tilley. (1989). *Take A Walk In Their Shoes.* Illustrated by Elton C. Fox. New York: Cobblehill Books, Dutton. I

This book includes 14 biographies of African Americans who achieved success despite odds against them. There are skits to act out and detailed background information allowing the reader to get "into their shoes."

Arlene F. Gallagher is Professor Emerita at Elms College. She is the editor for "Children's Literature and the Social Studies" for Social Studies and the Young Learner *and a member of YEFC's Advisory Commission.*


The Bill of Rights guarantees the right to assemble. Otherwise, they might still be that one step behind
I WISH MA COULD VOTE

The Right to Assemble

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The Right to Assemble

A Basic Right/Secondary

Leonne Lizotte

UPI/Bettmann Newsphotos

Introduction

The freedoms to assemble peaceably and to petition the government go hand in hand and are among our most basic and important liberties. They evolved as basic rights of Englishmen and were enjoyed by the American colonists up to a point. Interference with these rights was one of the causes of the American Revolution. As a result, the rights to assemble and to petition the government were fundamental rights included in the Bill of Rights. In 1789, when the first Congress under the Constitution was debating whether or not to include assembly and petition in the Bill of Rights, Rep. John Page of Virginia argued that if people could be deprived "of the power of assembly under any pretext whatsoever, they might be deprived of every other privilege" in the First Amendment.

In the 200 years following the adoption of the Bill of Rights, this freedom has been used as a means of expressing approval or disapproval of government actions. In a variety of ways and in many different forums, Americans have raised their voices and made their opinions known. Reactions to the expression of these rights have also varied. In some instances, the exercise of these liberties has led to court cases and contributed to the body of American case law.

The purpose of this lesson is to examine the origin of these freedoms and the reasons behind their inclusion in the Bill of Rights, the history of the freedoms in the 200 years since the adoption of the Bill of Rights, and, finally, the use of freedom of assembly as a means of communicating opinions to the government since the beginning of this country's involvement in the Persian Gulf crisis in August 1990. The lesson will ask students to consider the risks of a democratic government's interference with this type of freedom of expression, even in times of national crisis.

Time to Complete

Four to five class periods.

Goals

As a result of this lesson, students will be able to:

1. understand how the freedoms of assembly and petition evolved as one of the basic rights of Englishmen;
2. understand how Americans exercised these freedoms during the Colonial period;

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3. understand the role that British interference with these freedoms played in bringing about the American Revolution;
4. express reasons for including freedom to assemble peaceably and petition the government in the Bill of Rights;
5. discuss knowledgeably how these rights were exercised in selected instances throughout the 200 years since the adoption of the Bill of Rights;
6. examine cases involving freedom of assembly in order to understand their disposition within the context of the times;
7. consider the risks posed by a democratic government's interference with freedom of assembly and petition, even in times of national crisis; and
8. evaluate the importance of allowing people to exercise the rights to assembly and petition during the recent Persian Gulf conflict.

Procedures

1. Identify the goals of the lesson and divide the class into groups to share the research of selected topics which will later be shared with the entire class (the topics are listed in Handouts 1, 2 and 3). Allow two class periods for an explanation of the project and research.
2. On Day 3, groups will reassemble. Before reporting to the class as a whole, each group will discuss its findings and select a spokesperson to deliver its report. Begin with groups reporting on the evolution of freedom of assembly and petition as the basic rights of Englishmen. Next, have students report on the use of and restrictions on these freedoms during the American Revolution. Finally, have students have students report on the development of these freedoms since 1791.
3. On Day 4, students will discuss the role of freedom of assembly and petition as it relates to the Gulf crisis, with particular emphasis on the congressional debate which preceded the vote authorizing the President to use force after January 15. Students should be prepared to discuss the reactions of pro- and anti-war protesters in their community and the legal, moral and constitutional implications of the protesters' actions. Students can discuss, debate, argue, and/or role play the issue to express their points of view.

Handout 1

Selected topics to research the evolution of freedom of assembly and petition as a basic right of Englishmen

1. The Magna Carta (1215)
2. Wat Tyler's Rebellion (1381); (see *The Bill of Rights in Action*, Vol. 5, No. 2, Fall 1988, available from the Constitutional Rights Foundation Chicago)
3. English Petition of Right (1628)
4. Charles I and the dissolution of Parliament
5. English Bill of Rights (1689)

Handout 2

Selected topics to research freedom of expression and petition during the Colonial Period

1. Virginia House of Burgesses (and other colonial legislatures)
2. New England town meetings
3. Boston Pamphlet of 1772
4. Stamp Act Congress (1765)
5. Coercive (Intolerable) Acts (1774)
6. First Continental Congress and the Declaration of Resolves (1774)
7. Second Continental Congress (1776)
8. The Declaration of Independence

Handout 3

Selected topics involving freedom of assembly and petition since 1791

1. Hartford Convention (1814-15)
2. William Lloyd Garrison and August 21, 1835 pro-slavery Boston meeting (see *The Bill of Rights in Action*, Vol. 5, No. 2, Fall 1988, available from the Constitutional Rights Foundation Chicago)
3. Abraham Lincoln and the Spot Resolution (Dec. 22, 1847)
4. First and Second Women's Rights Conventions (1848 and 1851)
5. Clement L. Vallandigham and the Copperheads (Civil War period)
6. *Robertson v. Baldwin*,
7. *Davis v. Massachusetts*, 167 U.S. 43 (1897)
8. *Gompers v. United States*,
9. *Abrams v. United States*, 250 U.S. 616 (1919)
10. *Whitney v. California*, 274 U.S. 357 (1927)
11. *Hague v. C.I.O.*, 59 S.Ct. 954 (1939)
12. *Thornhill v. Alabama*, 310 U.S. 88 (1940)
13. *Bridges v. California*, 314 U.S. 252 (1941)
14. *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)
15. *Thomas v. Collins*, 323 U.S. 516 (1945)
16. *Terminiello v. Chicago*, 337 U.S. 1 (1949)
17. *Kovacs v. Cooper*, 336 U.S. 77 (1949)
18. *Feiner v. New York*, 340 U.S. 315 (1951)
19. *Edwards v. South Carolina*, 83 S.Ct. 680 (1963)
20. *Adderly v. Florida*, 87 S.Ct. 242 (1966)
21. Dr. Martin Luther King, Jr. and the civil rights movement of the 1960s
22. Lunch counter sit-ins of the 1960s
23. Vietnam War protests
24. The incident at Kent State University (1970)
25. Mergens v. Board of Education of Westside Community Schools, 58 U.S.L.W. 4720 (1990)
26. "Can the Pro-War Consensus Survive?" and "Shooting the Messenger," *Time*, Feb. 18, 1991, pp. 32-34.
27. "It's a Grand Old (Politically Correct) Flag," *Time*, Feb. 25, 1991, p.55.

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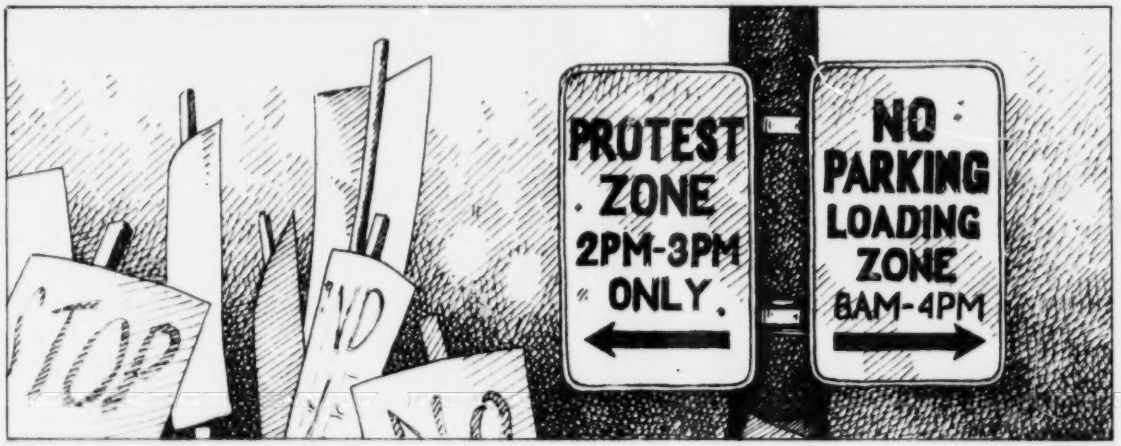
The Right to Assemble

Balancing Conflicting Interests/Middle David T. Naylor



Tom Herzberg

Background

The right to assemble to voice grievances, to protest governmental policies and actions, or to otherwise communicate views on matters of local, regional or national interest is among the most basic of rights citizens enjoy in a democratic society. Practically speaking, the outdoor meeting or demonstration provides an accessible, inexpensive public forum for all citizens, especially those who advocate the most unpopular of causes or who have least of financial means. Yet, as former Supreme Court Justice Arthur Goldberg pointed out in the 1965 majority opinion in *Cox v. Louisiana* (379 U.S. 536), the First Amendment right of assembly is not absolute. He wrote:

> The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excess of anarchy.

In this and other decisions, our courts have made it clear that we do not have the constitutional right to assemble to demonstrate or otherwise air views whenever, wherever and however we choose. When regulations are narrowly drawn and fairly administered, our courts have upheld the right of government officials to regulate the time, place and manner – but not the content – of public meetings and demonstrations. The two lessons that follow suggest ways that the poster which appears at the center of this issue can be used as a catalyst to help middle level students understand and appreciate the importance of the right of assembly and the delicate balancing of individual and community interests it requires.

Day 1

1. Begin by displaying the ABA poster "The Bill of Rights guarantees the right to assemble . . ."
   a. Write "Observations" on one section of the chalkboard and "Inferences" on another.
   b. Elicit *observations* by asking students to describe what they see. List student responses under the "Observations" heading. Use literal level questions to prompt responses as needed (e.g., "What type of people [gender, age] are shown?"; "What are the people doing?"; "What are some of the people carrying [banner, flags]?").
   c. Next, have students draw *inferences* based on what is shown in the poster. Write those responses under the "Inferences" heading. As needed, use such prompting questions as "What's taking place?" (note gathering of women in the street, banner and its message); "Why are some of the women carrying American flags?"; and "When did this take place?" (note dress, man in uniform).
   d. Then have students draw on their prior knowledge (or refer to an American history textbook or other source) to answer such questions as: "What was the outcome of the women's sufferage movement?" (i.e., women obtained the right to vote); "How did women secure the right to vote?" (i.e., by constitutional amendment, the nineteenth, passed by Congress in 1918 and ratified in 1920).
2. Activate prior knowledge by having students think of situations that have led or could lead people to gather in public to protest or otherwise demonstrate in support of or in opposition to a particular cause (e.g., the outbreak of war in the Middle East; the opening of an abortion clinic; an upcoming election; a rally celebrating a victory in the Super Bowl). Write the responses on the board.
   a. Ask students to relate any personal, on-site experiences they have had, either as participants or observers, with group demonstrations, marches or meetings. Have them share with the class how they came to be involved, what they saw (what the group did, how the participants behaved, how the non-participants reacted) and how they felt about it.
   b. Divide the class into small groups of approximately four to six students each. Assign the students in each group to make a list of instances of group demonstrations they have seen (e.g., in person, on

What Would You Do?

A small group of white supremacists want to hold a rally in your community. Public officials fear the rally will give the town a bad name, promote racial hostility and lead to violence. You are the city manager. The group applies for a permit. You must decide what to do. Before making your decision, you consider the five possibilities listed below. Which will you choose? Why?

A. Tell the group the community opposes them and their ideas. Deny the permit. Arrest them if they try to meet without a permit.

B. Require the group to explain in writing what they believe, why they want to hold the rally, and what they plan to do at it. Then decide what to do.

C. Grant the permit. Treat the group as you would any other group that applies for a permit.

D. Grant the permit but require that the group post a $25,000 bond to cover any damages that they or others may cause as a result of the rally.

E. Grant the permit but charge the group for the extra police protection that will be needed and for the cost of cleaning up after the rally is over.

television) or read about (e.g., in newspapers or books). For each instance, have group members specify the purpose of the demonstration, when it occurred (e.g., approximate year, day, and even time of day if known), where it occurred (e.g., park, street, public square), the form it took (e.g., march or rally), the people involved (e.g., size of group, type of people), and any problems that developed.

c. Then have each group identify one entry from each category (i.e., subject, time, place, manner, people involved). List responses on the chalkboard and discuss them.

3. Display the following excerpt from the First Amendment: "Congress shall make no law. . . abridging. . . the right of the people peaceably to assemble, and to petition the Government for a redress of grievances" on a poster, overhead or on the chalkboard. Clarify any unfamiliar words and briefly discuss the excerpt's meaning.
   a. Draw a balance scale on a large piece of newsprint. Place the phrase "The Right to Assemble" above it. Label one side "People's Need to Assemble" and the other "Community's Need to Restrict Assembly."
   b. Elicit and record reasons to support either side (e.g., "people's need": focus attention on cause or situation; make feelings known; inexpensive way to communicate views; "community's need": prevent excessive noise; ensure proper flow of traffic; keep people and property safe).
   c. Have students briefly discuss merits of the reasons presented, individually and overall.

Day Two

1. Invite an attorney to class to share perspectives on restrictions and the right to freedom of assembly.
2. Display both the ABA poster and the balance scale chart. Begin by reviewing the previous day's lesson.
   a. Focus attention on the reasons listed on the chart supporting the people's need to assemble. Add more reasons if students identify them. Then do likewise for the community's need to restrict the right of assembly.
   b. Ask students to identify what restrictions, if any, they would support regarding "the right of the people peaceably to assemble. . . ." List them on a separate piece of newsprint.
3. Point out that courts have held that communities may regulate the right of assembly by requiring groups to obtain a permit for an outdoor public gathering, march, rally or demonstration.
   a. Use the exercise "What Would You Do?" to promote understanding of the relationship between the permit regulation and the right of assembly and to emphasize the need for evenhanded treatment when granting permits.
   b. Divide the students into small groups. Have each group decide what to do in this situation. Let each group share its decision.
   c. Along with the attorney, discuss the exercise and the reasoning students used for the decision they made. Explore reasons why most options except "C" would be unconstitutional restrictions on the right to assemble. Emphasize that communities may not deny permits because of the nature of the ideas a group espouses. If desired, relate this discussion to the controversy over the Skokie Nazi Party march which occurred in the late 1970s (see *Smith v. Collin*, 436 U.S. 953).
4. Have the attorney briefly point out that the courts have upheld the right of communities to regulate the time, place and manner of assembly.
   a. Ask the attorney to describe how the permit process operates in your community. Distribute copies of the application form used, if possible. Have the attorney describe the types of limitations on the right of assembly in your community regarding time, place and manner and the reasons for those restrictions.
   b. Extend the discussion by having students consider which places, if any, should be considered "off limits" for public rallies and demonstrations (e.g., courthouses, schools, fairgrounds, jails, military bases, shopping malls, airports). Have the attorney indicate what locations courts have ruled off limits and the reasoning they used for the restrictions. (Note: For a discussion of whether an ordinance banning picketing near private residences violated the Constitution, see pages 54-55 of the Winter 1989 issue of *Update on Law-Related Education* which treats the 1988 case of *Frisby v. Schultz*.)

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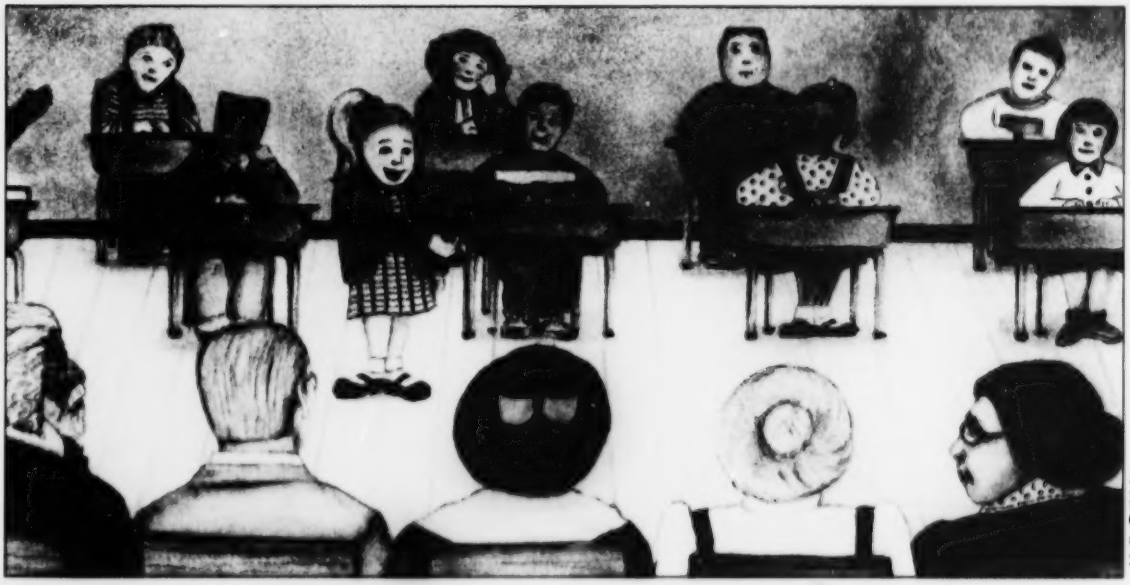
The Right to Assemble

A Talk Show from the Past/Elementary — Arlene F. Gallagher



Holly Pribble

"We ask justice, we ask equality, we ask that all the civil and political rights that belong to citizens of the United States of America be guaranteed to us and our daughters forever."
– Susan B. Anthony, 1896

The right to vote is inextricably bound up with freedom of assembly, freedom of expression and freedom of the press. If you are able to vote but not able to gather with others to discuss issues and hear different viewpoints your vote is an uninformed one. If you are able to vote but are not allowed to seek information freely from the press and other sources, your vote is an uninformed one. An uninformed vote is likely to be guided by self interest and may be worse than no vote at all.

The battle for the Nineteenth Amendment which finally gave women the right to vote was also tied closely to the abolitionist movement. This activity for upper elementary grades is just a beginning to engage students in research and study of some of the key players in the women's movement.

Objective

This activity will introduce students to key players in the fight for women's suffrage. It will actively engage them in asking questions of these historical figures to hopefully whet their appetites for more information. It will also provide a model, the talk show format, for other historical study. This activity will only scratch the surface of a period of history. Teachers should feel free to add other historical figures and questions to flesh out the time period.

Time Needed

Allow for two hour periods on two consecutive days to complete this activity.

Day One: Assemble, Reassemble— The Right to Meet in Groups

The right to meet in groups, to discuss and debate common interests and concerns is a basic cornerstone of democracy. In countries where this right is curtailed citizens' participation in self-governance is seriously limited.

MATERIALS AND PREPARATION

A list of groups that students might belong to and a list of preferences related to their experiences.

PROCEDURE

Write the following phrase on the chalkboard:
"the right of the people to peaceably assemble"

Ask the students what this means. Point out that if the government could prevent people from meeting in groups they wouldn't be able to talk to each other about common interests and concerns. Explain that the class is going to play a game called "Assemble, Reassemble."

Start by designating two places in the room for students to go to depending on their decisions and a place in the middle of the room to represent the "right not to choose." Call out the list of groups and have students go to stand in the place of their choice. They may take a moment to say something about their choice or you can move quickly from one topic to another. Begin with very simple preferences and move to topics that require more thought. The more complex topics will lend themselves to discussions about how choices are made and the consequences of those choices. Designate additional places to stand as the number of choices increases.

Suggested Choices
summer or winter

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walk in the mountains or walk by the ocean
baseball team, hockey team, chess team
reading, writing, drawing
bicycle riding, horseback riding, scuba diving
in favor of a leash law or opposed to a leash law
lowering the driving age to 14 or opposed to lowering it
Girl Scouts or Boy Scouts
add other topics representative of the students in your class

After students have assembled and reassembled conduct a discussion about the choices they made. What things did people have in common? How did it feel to exercise the right "not to choose"? Ask how it would feel not to be able to choose or not to be able to get together with people in groups. Explain that tomorrow the class is going to have a "talk show" with five famous Americans from history for whom the right to assemble was crucial.

There are brief profiles of the key players who should either be selected at random or by the teachers. These students will need to have copies of the profiles and of the questions to prepare themselves for the following day. Students who are selected to play these roles may wish to do additional research but it is not necessary to hold the talk show. Another way to do more in-depth study would be to divide the class into five groups, assigning one historical figure to each group to research which would require more time and instruction. The key player would be someone from the group who studied the historical figure. A student or the teacher can play the moderator, the talk show host.

Explain to the rest of the class that they will be the audience at the television studio and will be asking questions of the guests. Give them the names of the five guests and suggest that they might want to ask their parents what questions they would ask if they were attending such a historical talk show. Distribute the questions to the rest of the class. If you need more questions have the key players make them up. Tell the key players not to worry if they don't know an answer. They can stay "in character" by simply saying they choose not to answer or don't remember. These questions will serve as a research base for additional study.

Day Two

MODERATOR'S INTRODUCTION

Welcome to The _____ Show. Today we have five distinguished guests from the past. All of these guests were involved in the fight for women's suffrage. . . .a goal that was achieved because in this country we have the right to peaceably assemble. The guests for today's show are: Elizabeth Cady Stanton, Lucretia Coffin Mott, Susan Brownell Anthony, Frederick Douglass, and Woodrow Wilson. Please raise your hand if you have a question and address it to the appropriate person.

PROFILES

ELIZABETH CADY STANTON (1815–1902)
Often called the "mother of the women's suffrage movement," she organized the Women's Rights Convention in 1848. She was the daughter of a leading lawyer in Johnstown, New York. After attending the new seminary in Troy that Emma Willard opened her formal education was over since there was no college that would accept women. In 1840 she married Henry Stanton, with whom she had seven children. They went to London on their honeymoon where her husband was a delegate to the world anti-slavery convention. Instead of sightseeing, as was expected of her, she attended the convention. She was surprised to find out that most of the talk was about women and how to keep them from taking part, rather than about slavery. A number of the delegates from America were women but the convention voted to have the women sit off in the galley or behind a curtain. It was at this convention that Elizabeth Cady Stanton met Lucretia Mott. Together they planned the women's rights convention.

LUCRETIA COFFIN MOTT (1793–1880)
One of the earliest advocates of equal rights for women, she was also a Quaker minister. Born in Nantucket, Massachusetts, she attended public school in Boston and a Quaker boarding school in Poughkeepsie, New York. In 1811 she married James Mott, a teacher in the school. When the Quakers split over the slavery question in 1827 she joined the antislavery Hicksites, led by Elias Hicks and helped found the American Anti-Slavery society in 1833. She attended an anti slavery convention in London in 1840 and, when the convention refused to seat women, she and Elizabeth Cady Stanton joined together to work for women's rights.

SUSAN BROWNELL ANTHONY (1820–1906)
Born in New York, her father was a successful businessman who was also a Quaker and supporter of good causes. In 1851 when he went to visit Elizabeth Cady Stanton he brought his daughter with him. That was the beginning of a strong relationship between two women dedicated to the rights of all women. Henry Steele Commanger has said: "Each one was a tower of strength; together they were like an army." Although they had much in common in their beliefs about justice they were quite different in other ways. Susan never married. She did much of the research for the cause; the facts and figures needed to present their arguments. Elizabeth did most of the public speaking, at least initially. However Susan was the one who took the step to vote. In 1872 she went to a voting booth in Rochester, New York along with sixteen other women and was arrested and fined $100 which she refused to pay. Apparently the judge did not have the nerve send her to jail. Susan was also the one who went out west to try to convince the new states to give voting rights to women. Wyoming was first in 1869 followed by Utah and then Colorado.

FREDERICK DOUGLASS (1817–1895)
Born a slave in Talbot County, Maryland Frederick Douglass escaped to become one of the foremost black abolitionists and civil rights leaders in the United states. After his escape to New York Douglass became an agent of the Massachusetts Anti-Slavery Society, lecturing to large assemblies at first about his experiences as a slave and later denouncing slavery as an institution. When he traveled he was sometimes attacked by those who were against the abolition of slavery and he often met with discrimination. He published an autobiography but so feared that it might lead to reenslavement that he fled to Great Britain where English Quakers raised enough money to purchase his freedom. Douglass was a strong supporter of women's rights. At the Seneca Falls convention organized by Elizabeth Cady Stanton and Lucretia Mott his support was crucial. When the leaders insisted that women should have all the rights that belong to citizens of the United States some members of the audience thought that demanding the right to vote was going

too far. At this point Douglass stood up and spoke strongly. He said that slavery was just as bad for women as it was for Negroes. He said that one way to end it was by giving everyone the vote.

WOODROW WILSON (1856–1924)

Born in Staunton, Virginia he spent his childhood in Augusta, Georgia. His father, to whom he was very close, was his only teacher until age 13. At 14 his family moved to Columbia, South Carolina and Tommy, his childhood name, began reading books on the science of government. He announced to his cousin that he had decided to become a statesman. Before realizing that goal he became President of Princeton University where he tried to make major academic and social reforms. He was successful with the former but unable to eliminate the social clubs which he believed represented money and special privilege. Wilson served as president from 1913 to 1921, an administration during which several Constitutional Amendments were passed, including the Nineteenth which established women's suffrage. People believe that his support for women's voting rights had a significant effect on the success of the movement. In 1917 the United States entered the First World War sending American troops to England in their war with the Germans.

QUESTIONS

For Elizabeth Cady Stanton:

Why were you called the "mother of the Women's Rights Convention"? How did you meet Lucretia Mott? What was happening in London when you went there on your honeymoon?

For Lucretia Coffin Mott:

What was the organization called the Hicksites? What happened at the convention in London that prevented you from speaking against slavery? Can you show us on the map where you were born?

For Susan Brownell Anthony:

How did you happen to meet Elizabeth Cady Stanton? Were you the same age as Mrs. Stanton? What was your difference in age? Were you a lot like Mrs. Stanton or were you very different? Why were you arrested and why weren't you sent to jail? Which states were the first ones to give voting rights to women? Can you point them out on the map?

For Frederick Douglass:

Where were you born and to which state did you escape? Would you please indicate these places on the map. What happened to you when you traveled around to speak against slavery? Why did you support the voting rights for women?

For Woodrow Wilson:

When did you decide that you were going to be a statesman and what influenced you in this decision? What changes did you try to make when you were President of Princeton University and were you successful? Was the country involved in a war during your administration?

Annotated Bibliography

Oneal, Zibby. (1990). *A Long Way to Go.* New York: Viking.

Set in 1917 this is the story of the fight for women's suffrage told from the point of view of an eight-year-old girl whose grandmother is active in the movement. Lila experiences the struggle touching her own family when her father says, "I vote for this family," and his mother reminds him that she knew him before he could talk! The grandmother gets arrested, to the embarrassment of her son, but Lila is able to join her grandmother in a march after she makes her own convincing speech to her father. This is an excellent book to raise questions about the right to assemble and the women's suffrage movement. It places the reader in the viewpoint of an eight-year-old girl which offers an interesting perspective; one with which other children will identify.

Hamilton, Virginia. (1988). *Anthony Burns: The Defeat and Triumph of a Fugitive Slave.* New York: Alfred A. Knopf.

Thousands of abolitionists saw Anthony Burns as a symbol of freedom imperiled. Many of those who supported him were also supporters of the fight for women's suffrage. This superb novel dramatically illustrates how disadvantaged a large segment of the population was because the Bill of Rights did not apply to them.

Meltzer, Milton. (1990). *The Bill of Rights: How We Got It and What It Means.* New York: T. Y. Crowell.

This award-winning author has done it again. Using everyday questions that engage the reader Meltzer traces the origins of the Bill of Rights and shows how these rights have been contested in the past 200 years. Without proselytizing he makes a very convincing case for need for an active citizenry to continue to protect these freedoms. A book for the upper elementary student and for young adults. Many adults unfamiliar with the origins of the Bill of Rights will enjoy Meltzer's clearly written book.

Rappaport, Doreen. (1987). *Trouble at the Mines.* New York: Harper and Row. Bantam-Skylark Paperback, 1990.

Set in Arnot, Pennsylvania in 1898 this is a story of protest and underlies the importance of the right to assemble. Mining is dangerous but the owners do not care about the bad conditions nor do they care that the miners' families have little money for either food or clothing. Two men lead the miners in a strike and a woman named "Mother" Jones has cone to help them organize in this book for middle grade readers.

Zarnowski, Myra. (1990). *Learning About Biographies.* Published jointly by the National Council of Teachers of English and the National Council for the Social Studies. Available from NCTE at 1111 Kenyon Road, Urbana, IL, 61801.

This is one of the most exciting books for elementary teachers published in recent years. The author takes the reader through a step-by-step process that will have students writing biographies about historical figures with enthusiasm and detail. This book will make you want to become a biographer yourself.

(Note: "Assemble, Reassemble" is reprinted with permission from Education for Freedom: Lessons for Teaching the First Amendment by Arlene F. Gallagher with Laurel Singleton. Developed by the Social Science Consortium. Copyright First Amendment Congress, University of Colorado at Denver, Graduate School of Public Affairs, 1250 14th St., Suite 840, Denver, CO 80202.)

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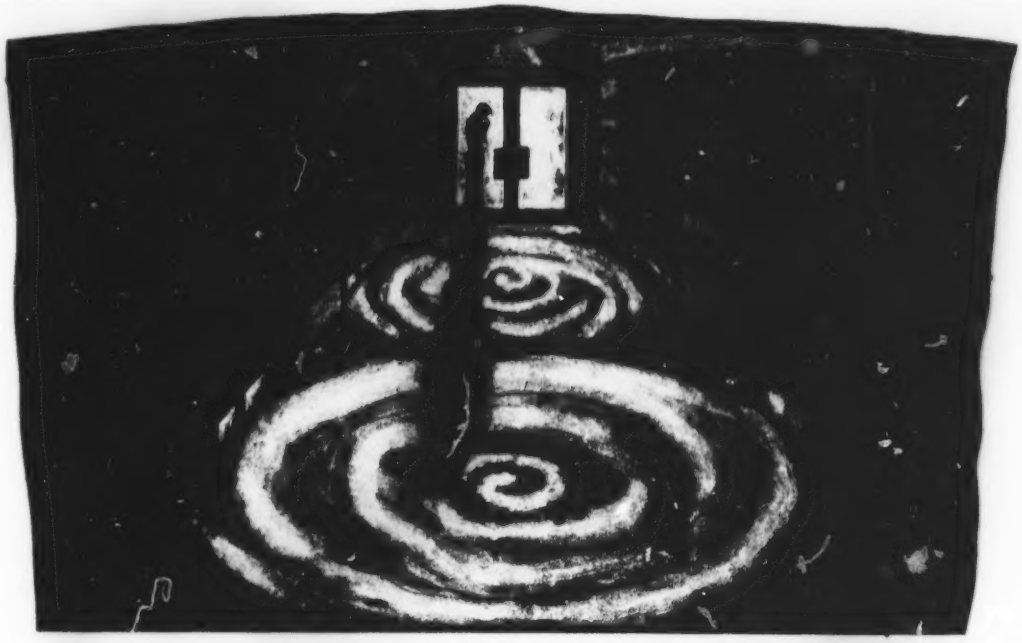
The Right to Counsel

The Right to Counsel

An Historical Overview/Secondary **William G. Priest**



Troy Thomas

As is demonstrated by the inclusion of the "right to counsel" within the Bill of Rights, this right is regarded as a fundamental liberty essential to a free society. Yet the Sixth Amendment, within which this right is contained, provoked little discussion or debate at the time of its passage. Subsequently, this right evolved gradually at the national level and was applied unevenly at the state level. Only during the last thirty years has this right to counsel been interpreted in a broad, consistent manner. This recent series of changes occurred because of several landmark United States Supreme Court decisions, for example, *Gideon*, *Miranda*, and others. Today, however, these decisions are being challenged and reversed in some ways because of pressures for a more effective criminal justice system.

The following lesson suggests several ways to introduce students to the meaning of the right to counsel. By exploring the historical development of this right, students should gain a greater understanding of the Sixth Amendment, the Bill of Rights as a whole, and the evolutionary nature of our constitutional system. To accomplish these goals, several steps are outlined below. Some of the ideas contained therein may best apply to United States history classes, some to American government courses, and others to contemporary issues or law-related education curricula.

Procedure

STEP ONE

To focus student thinking on the Sixth Amendment, display the ABA poster to the class and ask students where the right to an attorney appears in the Bill of Rights. After allowing them to answer, instruct each student to examine the Bill of Rights to find the specific passage within the Sixth Amendment where this right is spelled out.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and *to have the assistance of counsel for his defence*.

Ask students why this right is so important as to be included in the Bill of Rights. (Perhaps asking students to write freely for five minutes on this topic would help focus their thoughts before general classroom discussion commences.) A second question to further spark thinking, writing, and/or discussion, or to use as a follow-up to this free writing, would be: "Is it possible for a person to have a 'fair trial' and enjoy the due process of law guaranteed in the Fifth, Sixth, and Fourteenth Amendments without the assistance of an attorney?"

Discuss student responses to these questions and then challenge students to compare the exact language of the Sixth Amendment with the caption of the poster. Be certain that they recognize the differences between them, i.e., that the Constitution says "in all criminal prosecutions" and originally applied only to cases in federal courts.

STEP TWO

To reconcile these two viewpoints, provide an historical overview of the evolution of the right to counsel from its original interpretation to its current construction. (In a United States history class, this may well be an appropriate opportunity to begin a study of the evolutionary nature of the Constitution.)

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During colonial times, defendants' right to counsel varied from place to place. In England those accused of minor offenses (e.g., libel, perjury, battery, etc.) were accorded the right to counsel while those accused of criminal offenses other than treason were not. During the early national period, only a few states – perhaps only New Jersey and Connecticut – accorded the full right to counsel even if the accused was unable to pay for it. At the national level, although James Madison secured the inclusion of this right within the Bill of Rights readily enough, the absence of detailed debate or discussion casts doubt on the true significance of the right to counsel at that time. Clearly the right to counsel was often interpreted simply as the right to retain counsel if you could afford one – and then only in criminal cases. Over time, judges in federal courts seemingly liberalized this interpretation and provided for the appointment of counsel in the absence of the ability to pay. Then, in the 1942 decision of *Betts v. Brady*, the Supreme Court recognized "special circumstances" in some state-level criminal cases where the accused might suffer infringement of due process rights without "assistance of counsel," and therefore the right to counsel had to be extended to those defendants under the Fourteenth Amendment. Those special circumstances might include "illiteracy, ignorance, youth, or mental illness, the complexity of the charge against him or the conduct of the prosecutor or judge at the trial." However, not until 1963, when Clarence Earl Gideon petitioned the Supreme Court for review of his request for a writ of *habeas corpus* freeing him from his Florida prison cell, did a dramatic transformation in the constitutional interpretation of right to counsel take place.

The *Gideon v. Wainwright* case is the subject of an excellent book entitled *Gideon's Trumpet*, by Anthony Lewis, and a film of the same name. Either of these would be an excellent vehicle for introducing students to the workings of the Supreme Court, the evolutionary nature of our individual rights, and the intricacies of our legal system. The film is available on videocassette and can be viewed in approximately two hours. Two central questions to ask students after viewing the film or reading the book are:

1. Why did the Supreme Court decide to reverse existing precedent and extend the right of counsel to defendants in state-level trials without regard to "special circumstances"?

2. Was the right to counsel essential to ensure a fair trial and due process for Clarence Earl Gideon?

STEP THREE (optional)

This activity is particularly useful in a government or law-related education class and focuses on a current issue involving possible infringement of the right to counsel. Virtually every state employs some form of "implied consent" doctrine for prosecution of driving while intoxicated (DWI) offenses. Obtain the text of your state's law(s) regarding DWI or "abuse and lose," and provide copies to students. Point out the provisions regarding refusal to submit to a sobriety test, which is usually done by means of a breathalizer. States have generally adopted the theory that acceptance of a driver's license entails certain responsibilities to which every driver has automatically given his or her implied consent. Among these responsibilities is submitting to a sobriety test when requested by a law enforcement officer. In most instances a time lag or waiting period no longer occurs between the time a suspect is stopped and is requested to take the test. This is intended to prevent the decrease of the alcohol content in the bloodstream before the actual test. States have adopted this approach through practical necessity in an attempt to combat this escalating problem. However, this action has elicited numerous challenges to the doctrine of implied consent and the laws based thereon. Constitutional objections include violation of Fifth Amendment protection from self-incrimination (either through refusal to submit, thereby tacitly admitting guilt, or through having the results of the breathalizer obtained from your own body proving your own guilt) to deprivation of the right to consult counsel before making the decision to submit or refuse the test.

This is a classic instance of the general welfare rights of the community to be protected from drunk drivers conflicting with the rights of an individual driver. After familiarizing the class with these facts, divide the students into groups of three to five and challenge them to develop a workable solution to this constitutional dilemma. Each group must submit a solution that the entire group can accept, whether it reconciles both sets of rights or seeks to protect the rights of the individual over the group or vice versa.

After solutions have been developed by the groups, convene a mock session of the state legislature to discuss each proposed "bill" to amend, replace, or uphold existing statutes pertaining to implied consent and corollary issues. If possible, invite a member of your state legislature to preside over your mock session and have him or her discuss the relative merits of the student proposals.

References

"19th Annual Review of Criminal Procedure," *The Georgetown Law Journal*, Vol. 78, No. 4, pp. 1077-84. (This article provides an excellent summary of the existing practice of the right to counsel and its legal origins.)

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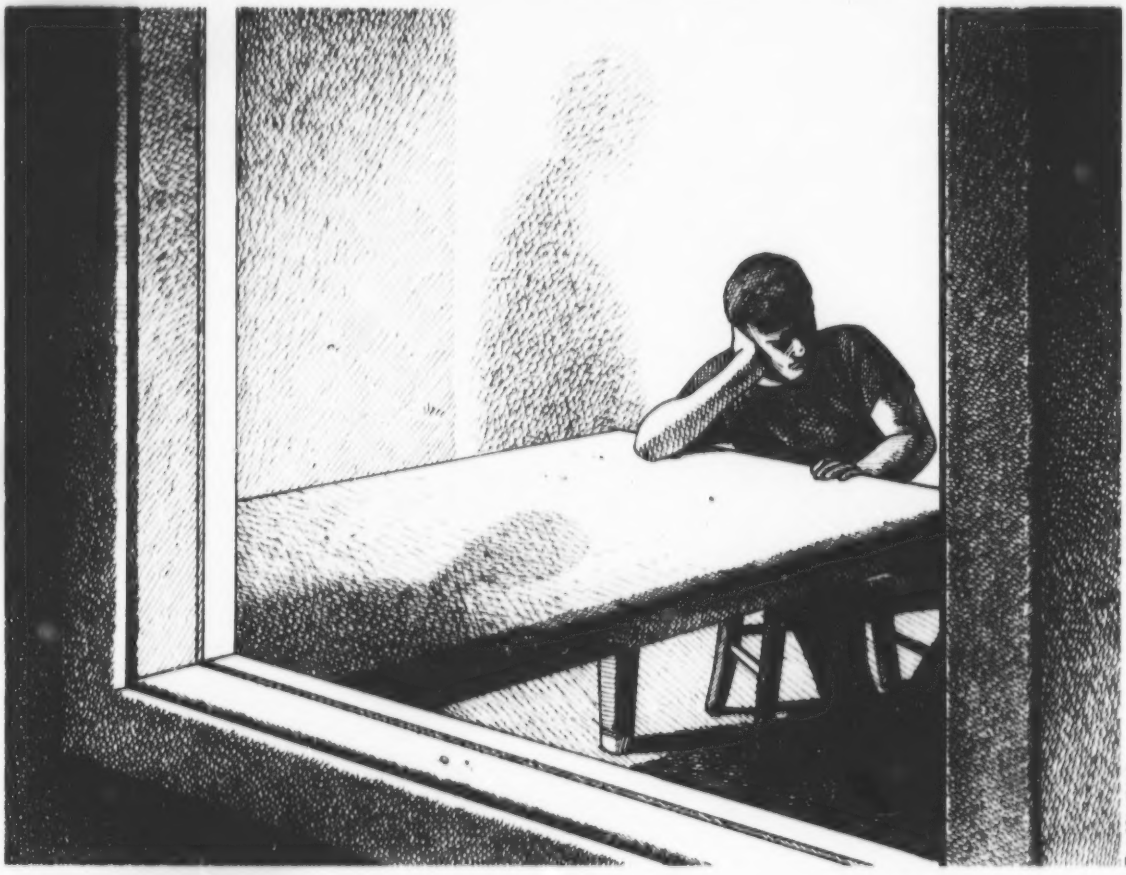
William G. Priest teaches at Rock Bridge Senior High School in Columbia, MO.

The Right to Counsel

A Necessity, Not a Luxury/Middle David T. Naylor



Tom Herzberg

Background

The right to counsel is one of our most important rights. It lies at the heart of the adversary system. As with other salient legal concepts, its meaning has evolved over time. Originally, the right to counsel was narrowly interpreted to mean that those who could afford an attorney should not be denied the right to hire one. In addition, access to counsel at various stages of the criminal justice process was severely limited. The right to counsel was permitted at trial, but not proceedings before or after it.

During the twentieth century, the right to counsel has undergone significant change. No longer is the right restricted only to those who can afford it. No longer is it limited to adults. And, no longer is the right to counsel restricted to trial. Landmark Supreme Court decisions have significantly expanded our understanding of this basic right and assured its reality to all citizens, regardless of socioeconomic status. Some of those decisions have become veritable household words – *Gideon, Gault, Miranda.*

This lesson enables students to explore several dimensions of the meaning of the right to counsel. It begins with a questionnaire permitting students to express their views regarding matters related to this basic right. Students then explore what the right to counsel means and develop a list of reasons why the right to counsel is so important. Next, students consider the meaning of "access to counsel," including the *Miranda* decision. They conclude with an examination of the role of the criminal attorney. Follow-up and enrichment activities are also provided.

Procedure

1. Begin the lesson by making reference to a current, preferably widely known, situation involving an attorney representing a client (e.g., a recent court decision, a trial, an arrest). [An alternative is to show a few previously-recorded legal services advertisements that have appeared on television.] Elicit reactions to that situation and attorneys in general. Then distribute and have students complete the exercise, "What's Your Opinion?"

What's Your Opinion?

Instructions: Circle the word next to each statement to indicate how you feel about it.

AGREE DISAGREE 1. Every person accused of a crime should be represented by an attorney.

AGREE DISAGREE 2. Our courts should reduce rather than expand the rights of persons accused of committing crimes.

AGREE DISAGREE 3. Defense attorneys are more concerned about getting their clients off than in finding out if their clients are innocent or guilty.

AGREE DISAGREE 4. Police and prosecutors should be able to take whatever measures they feel are necessary to apprehend and convict persons who commit crimes.

AGREE DISAGREE 5. An attorney should never defend someone he or she believes to be guilty.

AGREE DISAGREE 6. It's better to have guilty people go free than to use illegally obtained evidence to convict them.

AGREE DISAGREE 7. The more people are aware of their constitutional rights, the better.

AGREE DISAGREE 8. One who is his own lawyer has a fool for a client.

2. When students complete the exercise, use a show of hands to tally responses. Record results on a transparency or the chalkboard. Select a few items for discussion. Have students share reasons for their choices. [Note: Save responses for use later in the lesson.]

3. Display or otherwise make available the poster showing the man in a jail cell. Call attention to the first sentence on the poster. Then have students find this guarantee in the Bill of Rights.

4. Divide students in small groups. Distribute a copy of Student Handout 1 to each group and ask each to list on it reasons *why* the right of counsel is important. When the groups complete their task, have them share their reasons. Record responses on the chalkboard. Discuss the reasons given.

5. Focus attention on the second sentence of the poster (i.e., "Bar none."). Elicit reactions as to its meaning. Point out how court decisions have increased access to the right to counsel for all persons accused of committing criminal offenses (e.g., *Gideon v. Wainwright*, (1963)—counsel must be provided to indigents charged with felonies;

Student Handout 1:
The Importance of the Right to Counsel

Many people consider the right to counsel one of our most important rights? Do you? Think of reasons why this right is important. List them below.

The right to counsel is important because . . .

Here are some of the reasons given by members of the United States Supreme Court explaining why the right to counsel is so important.

Statement A

That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if [a person] charged with crime has to face his accusers without a lawyer to assist him.

Gideon v. Wainwright, 83 S.Ct. 792 (1963)

Statement B

If charged with crime, [even the intelligent and educated layman] is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect.

Powell v. Alabama, 53 S.Ct. 55 (1932)

Student Handout 2:
Access to Counsel

In all criminal prosecutions, the accused shall enjoy the right . . .
to have the assistance of counsel for his defence.

Amendment Six of the U.S. Constitution

. . . [A]fter a person has been taken into custody or otherwise deprived of his freedom of action in any significant way . . . the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney either retained or appointed. The defendant may waive . . . these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him.
Miranda v. Arizona, 86 S.Ct. 1602 (1964)

. . . No system worth preserving should have to *fear* that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights. If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system.
Escobedo v. State of Illinois, 84 S.Ct. 1758 (1964)

Argersinger v. Hamlin, (1972) – counsel must be provided to indigents charged with misdemeanors; *In Re Gault*, (1967) – counsel must be provided to juveniles charged with delinquency). Discuss the importance of the access issue.

6. Shift attention to the *Miranda* decision, emphasizing the role of the U.S. Supreme Court in interpreting the Constitution. Distribute Student Handout 2. Call attention to the guidelines the Supreme Court specified for police and other government officials. Mention some of the concerns that have been voiced about the wisdom of these guidelines. Refer students to the excerpt from *Escobedo* and elicit their reactions to it and the *Miranda* decision.

7. Focus on the role of the criminal attorney. Let students share what they know about criminal attorneys, including those with whom they are familiar (e.g., F. Lee Bailey). List responses on the chalkboard. Then display the following quotation and elicit reactions to it.

The Role of the Criminal Attorney
Criminal lawyers, it is said, police the police. Also, we police the courts. Every time we try a person, we are trying – and defending – more than the accused. We're defending you, that lady down the street, and the Bill of Rights. But nonetheless, criminal lawyers are controversial figures. We try to get justice for the ones you or the newspapers have labeled bad. But we can sleep nights, because we're the ones who hold the state to the ground rules you and our legislators have established. We're the ones who see to it that society doesn't convict a person who shouldn't be convicted. (William Foster Hopkins, *Murder Is My Business*)

8. If time permits, conclude the lesson by revisiting the exercise used at the beginning of the class session. Elicit reactions to the items, especially those about which students may have changed their opinion.
9. Extend this lesson with one or more of the following activities:
   a. *Courthouse trip:* Arrange for the students to go the local courthouse to observe arraignments. This is the time when the presiding officer will inquire as to the status of legal representation and assign legal counsel as needed. Provide the opportunity for students to meet with a judge and one or more of the attorneys. Explore the role and importance of the right to counsel.
   b. *Attorney in the classroom:* Invite an attorney who represents criminal defendants to your classroom to discuss the role of the criminal attorney. As a variant, also invite a prosecutor to visit at the same time. Have them use a modified pro/con format to emphasize key points and different perspectives.
   c. *Subsequent topics:* Develop one or more additional lessons to expand consideration of the right to counsel. Suggested topics include an examination of the stages at which counsel is required (e.g., upon arrest, at lineups, for appeals), the right to defend oneself, the right to competent counsel, the nature of the attorney-client relationship (see p. 41 of the Winter 1988 issue of *Update on Law-Related Education* for an especially interesting situation) and the representation of the unpopular or despicable client.

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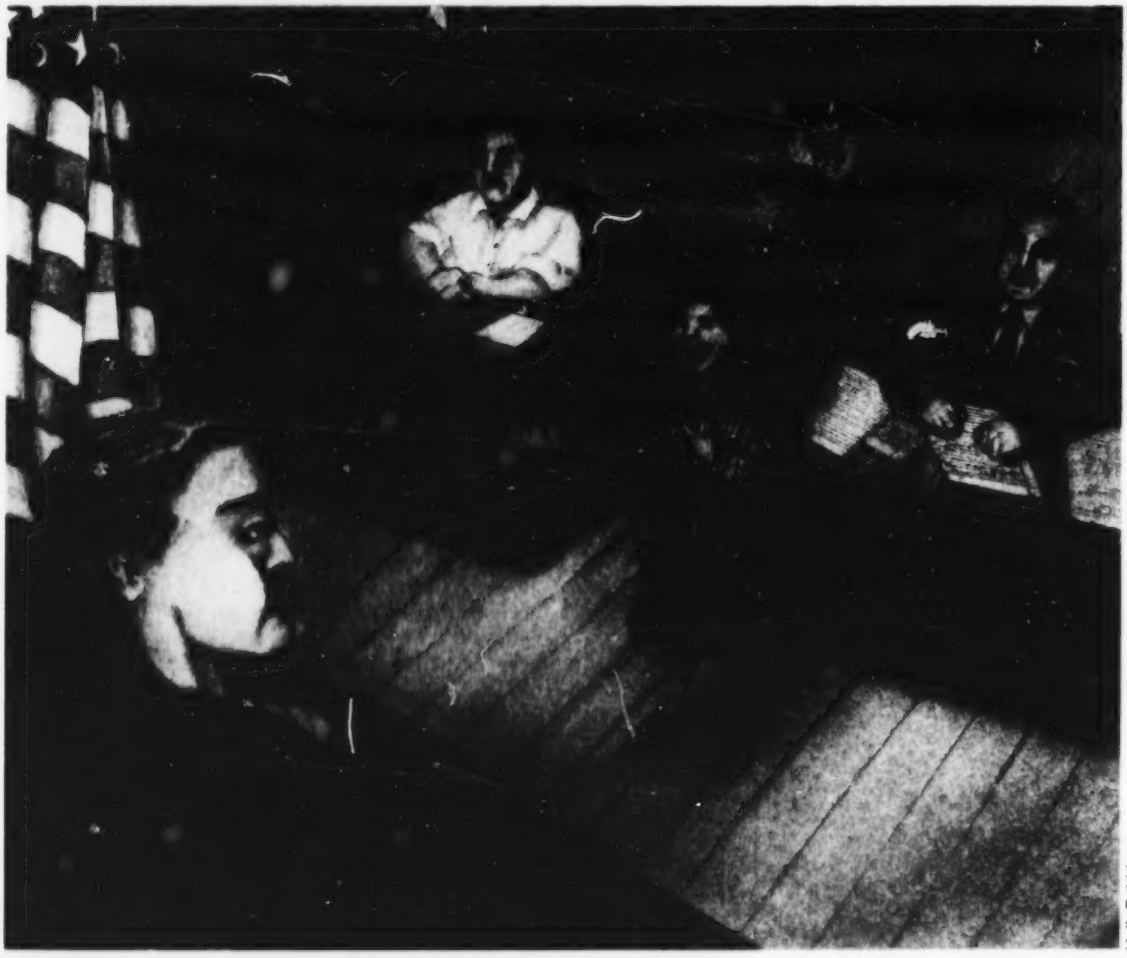
The Right to Counsel

The Case of Clarence Earl Gideon/Upper Elementary **Arlene F. Gallagher**



Holly Pribble

The question is really very simple.
I requested the court to appoint me an attorney
and the court refused.

Earl Clarence Gideon wrote the above statement in his petition for review to the United States Supreme Court. The question was actually quite complicated, not simple at all.

A photograph of a man behind bars is a reminder that two of the most basic rules of criminal procedure are the right to a lawyer and the right to remain silent; the Sixth and Fifth Amendments. There are three landmark Supreme Court cases that deal with issues related to these rights: *Gideon v. Wainwright* (1963), *Miranda v. Arizona* (1966), and *Harris v. New York* (1971). In this strategy the first case, that of Clarence Earl Gideon, will be used to present the case study method.

Although the case study method is used in law schools, business schools, and in graduate programs, the basic elements and procedures can be taught in upper elementary grades four through six. Through this method, students read or listen to information about a particular case and analyze it by determining the facts and issues. In discussing the case both sides should be argued, for it is often by arguing for the side with which you disagree that you can clarify your thinking.

Activity

The Case of Clarence Earl Gideon

Purposes

The main purpose is to have students understand the importance of the right to an attorney and that this right is so important that it cannot be denied to those who cannot afford to pay for the services of an attorney. The activity will also introduce students to the basic elements of the case study method.

BEST COPY AVAILABLE

Procedure

In order to engage students in the case, present the following transcript from the beginning of Gideon's trial. For maximum student participation, photocopy the transcript, divide the class into groups of three and have them choose parts to read out loud.

The Court: Judge Robert L. McCrary, Jr.
Assistant State Attorney: Mr. William E. Harris
The Defendant: Clarence Earl Gideon
Place: Circuit Court of the Fourteenth Judicial Circuit of Florida in Bay County.

The following is an actual excerpt from the trial transcript when Gideon requests the court to appoint an attorney to represent him.

THE COURT:
The next case on the docket is the case of the State of Florida, Plaintiff, versus Clarence Earl Gideon, Defendant. What says the State, are you ready to go to trial in this case?

MR. HARRIS:
The State is ready, your Honor.

THE COURT:
What says the Defendant? Are you ready to go to trial?

THE DEFENDANT:
I am not ready, your Honor.

THE COURT:
Did you plead not guilty to this charge by reason of insanity?

THE DEFENDANT:
No, sir.

THE COURT:
Why aren't you ready?

THE DEFENDANT:
I have no counsel.

THE COURT:
Why do you not have counsel? Did you not know that your case was set for trial today?

THE DEFENDANT:
Yes, sir, I knew that it was set for trial today.

THE COURT:
Why, then, did you not secure counsel and be prepared to go to trial?

(The Defendant answered the court's question, but spoke in such low tones that it was not audible.)

THE COURT:
Come closer up, Mr. Gideon, I can't understand you, I don't know what you said, and the reporter didn't understand you either.

(At this point the defendant arose from his chair where he was seated at the counsel table and walked up and stood directly in front of the bench, facing his Honor, Judge McCrary.)

THE COURT:
Now tell us what you said again, so we can understand you please.

THE DEFENDANT:
Your Honor I said: I request this court to appoint counsel to represent me in this trial.

THE COURT:
Mr. Gideon, I am sorry, but I cannot appoint counsel to represent you in this case. Under the laws of the State of Florida, the only time the court can appoint counsel to represent a defendant is when that person is charged with a capital offense. I am sorry, but I will have to deny your request to appoint counsel to defend you in this case.

THE DEFENDANT:
The United States Supreme Court says I am entitled to be represented by counsel.

THE COURT:
Let the record show that the defendant has asked the court to appoint counsel to represent him in this trial and the court denied the request and informed the defendant that the only time the court could appoint counsel to represent a defendant was in cases where the defendant was charged with a capital offense. The defendant stated to the court that the United States Supreme Court said he was entitled to it.

Discuss what happened in the court. Ask students whether or not this seemed fair. What problems could arise if the court had to appoint counsel to all persons who requested it? What problems could arise if a person does not have counsel?

Paraphrase, read or photocopy the summary of the Gideon case for your class to read. Ask them to take notes about the following questions to help them identify the facts and issues. The notes should include details about the person involved, what he was accused of doing, what happened to him and whether the jury found him guilty or innocent.

Summary of Gideon v. Wainwright

It was not surprising that Clarence Earl Gideon was arrested in Florida and accused of breaking and entering a poolroom for he had a long prison record. This time he was charged with breaking into the Bay Harbor Poolroom in Panama City, Florida. When he was brought to court, he asked the court to appoint a free lawyer to defend him, telling the judge that he had no money to pay. And this was true. Gideon had no money. The judge explained that in the state of Florida lawyers were provided free of charge only in murder cases.

Gideon's only recourse was to act on his own behalf, as his own lawyer. He did this by telling his story to the jury as well as he was able. He accepted the six men on the jury when the judge said to look them over and told Gideon that any of them could be excused (replaced) and that Gideon did not have to give a reason. A lawyer probably would have asked jurors specific questions to try to find out if any of them were biased. Gideon questioned an eyewitness who claimed he had seen Gideon in the poolroom. However, Gideon did not defend himself very well and was found guilty.

Clarence Earl Gideon was sent to prison where he decided to write to the highest court in the United States, the Supreme Court, to ask it to reconsider his conviction.

Gideon believed that if he had been represented by an attorney who knew the law the result of the trial would have been different.

Every citizen has a right to ask for this kind of review; however, there are many more requests that are denied compared to the number of cases that the Supreme Court decides to hear. Gideon wrote his request in pencil, in language that was not always grammatically correct, arguing that he should have had the help of a lawyer at his trial. He believed that if a person does not have enough money to hire a lawyer, the state should provide one free. He had been denied counsel, by virtue of the fact that he could not afford one, which meant that he had not received "due process" – in other words, a fair trial.

It is important to remember that no case occurs in a vacuum. Cases are considered all the time by the Supreme Court. Perhaps one of the most important, and significant, decisions the Court makes is which cases to consider. This means the Court may take a stand on a critical issue and may even reverse one of its previous decisions. When it decided to consider Gideon's case, it was actually deciding to reconsider an earlier decision, *Betts v. Brady* (1942). This was a case heard by the Supreme Court 20 years earlier, in which it rejected the idea that the Due Process Clause of the Fourteenth Amendment guaranteed the right to counsel in state criminal trials. It stated that only in special circumstances were poor criminal defendants entitled to have free legal counsel. Those special circumstances were age, experience, mental capacity, familiarity or unfamiliarity with court procedure, or charges with complex legal issues. Other cases after *Betts* were decided according to what became known as the Betts Rule.

Discussion

Who is Clarence Earl Gideon?
What is he accused of doing or not doing?
What happened at the trial?
Was Gideon found guilty or innocent?
Do you think the United States Supreme Court should hear this case? Why or why not?

Issues in the Gideon Case

- Should a person accused of a crime be defended by a lawyer free of charge if he or she cannot afford to pay for one?
- Should a state have to pay for the legal counsel of accused persons?
- Should the Supreme Court reverse itself on the *Betts v. Brady* decision?
- Should the decision about whether a person has the right to free legal counsel be decided by each state?

Sorting and Evaluating Arguments

One of the difficult aspects of a case study is deciding what arguments are relevant and which of those are most convincing. Attorneys do not do this all by themselves. They have colleagues to assist, law libraries in which to research other cases, and their own experience to rely upon. In this next step, divide students into groups of five so that they can help each other. This is also an excellent time to invite an attorney to your classroom to assist the groups. It's best to familiarize students with the case before bringing in the attorney, otherwise the guest is put in the postition of just providing information. The time with the attorney will be much more fruitful if the class has done some preliminary study.

Write the following questions on the board and check periodically with groups to be sure they are focused on them. If your class is accustomed to group tasks they may be able to work more on their own.

1. Is this an argument in favor of Gideon? Or is it an argument against Gideon's plea?
2. Is this a relevant point? Does it have anything to do with the issues of the case? The group should be prepared to defend their answer by giving specific reasons.

Arguments

Photocopy the following arguments and give one to each group to discuss. (A suggestion for layout and design: If the following items A through K are in boxes it will make the task easier for the teacher.)

A. The states should decide what is fair in their courts, not the Supreme Court which is a branch of the federal government. Customs and life vary from one part of the country to another and it is better to have the people who live there make the decisions.

B. Clarence Earl Gideon is the father of five children. If he is kept in prison the state will have to take care of these children. This costs the taxpayer money when this man could get a job and support his own family.

C. The Court considered this question 20 years ago and it is important to be consistent in making decisions. If this present court decides differently it is the same as saying that the Supreme Court was wrong 20 years ago.

D. The *Betts v. Brady* decision was controversial and had been disputed ever since. It was a 6 to 3 decision. Since the Supreme Court did not agree unanimously it was probably a mistake.

E. The key words in the *Betts* decision were if it meant that the accused would be denied "fundamental fairness" not to have a lawyer, then the person should have a lawyer.

F. Clarence Earl Gideon had been convicted of numerous crimes in his life and had been in and out of prison many times. It's very likely that he did break into the poolroom.

G. The attorneys general of Alabama and North Carolina filed briefs (statements) arguing that the decision in the Florida court should be upheld.

H. Twenty-two states filed briefs (statements) arguing that the decision of the Florida court should be reversed.

I. Our criminal justice system is based on the adversary process in which two sides oppose each other, bringing out the facts of a case. The state of Florida had an attorney and Gideon had none. This was an "unfair fight."

J. Each state should decide for itself whether a person who can't afford an attorney should have one. At this time, 37 states provided counsel for the poor in all felony trials and eight others often did.

K. The State of Oregon filed a brief (statement) that it would protect constitutional rights better and would be less expensive to insist that an accused person have counsel. This state submitted records of evidence to support this opinion.

Possible Responses to the Arguments' Relevance and Viewpoint

This section is not labeled "answers" because in this method there is more than one possible answer. What is most important is that the students think critically and not that they come up with a particular "correct" answer. The teacher should use this section with discretion.

A. This argument does not favor Gideon. It raises the issue of states' rights and claims that states have the right to decide. It was relevant in this case because the decision would mean that states could no longer decide.

B. This argument favors Gideon. It is not relevant. In our system of justice only the facts directly related to the crime make a difference. The fact that a person accused of a crime is a parent or has any children is not related to the crime in this case.

C. This argument does not favor Gideon. It refers to "stare decisis" which are Latin words that mean "to stand by what is decided." It is relevant because the Supreme Court had already decided about a very similar case – *Betts v. Brady*. Times change and what the Court decided a long time ago may not reflect the values of the people anymore.

D. This argument favors Gideon. It claims that the original decision on this issue was the wrong decision.

E. This could favor Gideon but it could also be used against his case. It depends on what is meant by "fundamental fairness."

F. This argument does not favor Gideon. It is not relevant. Whatever Gideon did in the past should not be used against him in this case.

G. This argument does not favor Gideon. It is relevant if the justices consider the opinion of the states. If they do not think the opinion of the states is important, then they would consider this argument irrelevant.

H. This argument favors Gideon. It is relevant if the justices consider the opinion of the states. If they do not think the opinion of the states is important, then they would consider this argument irrelevant.

I. This argument favors Gideon. It is relevant because it has to do with whether the trial was fair.

J. This argument sounds as if it favors Gideon if you believe that the majority is important but Gideon lived in Florida where an attorney was not provided. Furthermore, sometimes the majority is wrong. It is relevant because it relates to the issue of states' rights.

K. This argument favors Gideon. It is relevant because it is concerned with rights and the way the system of justice works.

Additional Resources

FOR TEACHERS

Lewis, Anthony. (1964). *Gideon's Trumpet.* New York: Random House.

This is an excellent reference for teachers. It contains a great deal of background on the United States Supreme Court as well as about Clarence Earl Gideon. There is some outdated information because it was published in 1964. For example, Lewis refers to the nine *men* on the Supreme Court.

FOR STUDENTS

The books for students were selected primarily because they deal with trials and the right to have an attorney.

Peck, Robert Newton. (1980). *Justice Lion.* Boston: Little Brown.

Two Vermont families have built up an affection for one another during the Prohibition years: the Bolts, Jessie and Muncie; and the Lions, including Justice and Hem. The two families share the same small town but live very different lives. Jessie Bolt is the newly-appointed district attorney. Justice Lion, head of a renegade clan, is a moonshiner, yet each has his own sense of values. When Justice Lion is arrested by a federal agent, it is Jessie who must prosecute. Hem and Muncie must cope with the disintegration of all they love and believe in. Several of the book's chapters are excellent for reference and demonstration of a trial, including language and procedure; students may be able to analyze the trial to see if the procedure is correct.

Hamilton, Virginia. (1988). *Anthony Burns: The Defeat and Triumph of a Fugitive Slave.* New York: Alfred A. Knopf.

Anthony Burns was born a slave but he escaped to Boston in 1854. He was arrested and held without bail because his former owner demanded it under the Fugitive Slave Act of 1850 – a highly controversial federal law that allowed owners to reclaim escaped slaves by presenting proof of ownership. The hearings triggered violent riots causing the federal government to call in thousands of troops. Initially, Burns refused counsel but finally accepted Richard Dana who had volunteered to defend him.

Clapp, Patricia. (1987). *The Witches Children: A Story of Salem.* New York: Lothrop, Lee & Shepard Books. Puffin Paperback, 1987.

This is the story of the witch-hunt trials in Salem, Massachusetts. The town elders believed that the children are possessed by witches with the result that men and women in the community are brought to trial and convicted. The evidence that was permitted during the witchcraft trials was vastly different than that allowed today and the concept of "guilty until proven innocent" prevailed rather than the opposite.

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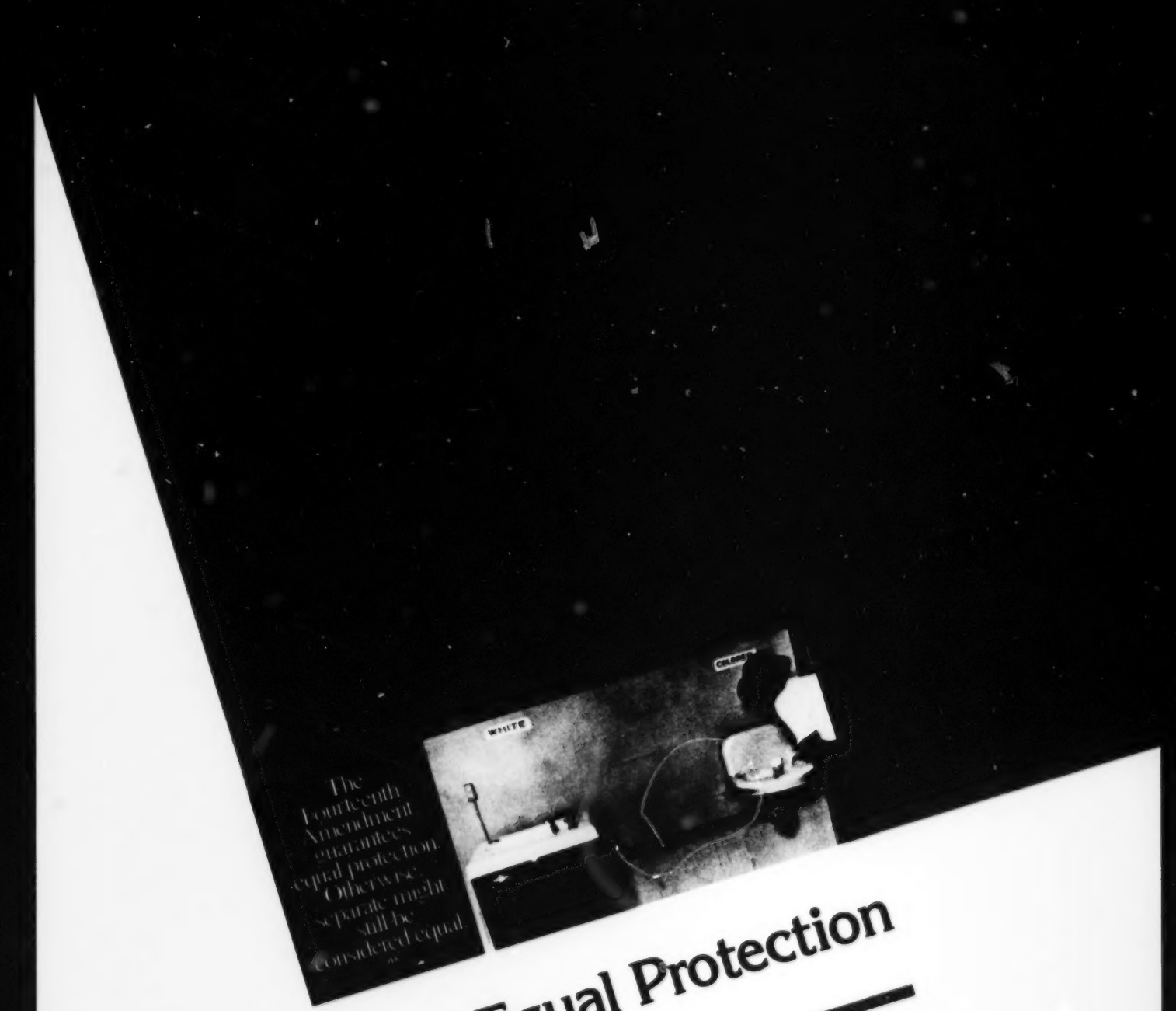

The Fourteenth Amendment guarantees equal protection. Otherwise, separate might still be considered equal.
WHITE
COLORED

Equal Protection

Equal Protection

The Struggle for Equality/Secondary **Mary Louise Williams**

UPI/Bettmann Newsphotos

Rationale

Americans have had three opportunities to deliberately create their own constitutional order based on what they perceived to be a just society. The first was the American Revolution and the subsequent ratification of the Constitution. The second was Reconstruction with the ratification of the Fourteenth Amendment. The third was the Second Reconstruction or the Civil Rights Movement of the mid-twentieth century testing the meaning of the Fourteenth Amendment. This lesson traces the legal evolution toward a just society from 1865 to 1965 through congressional acts and Supreme Court decisions from this period. Students, using bar graphs to quantitatively define their perceptions, will assess the advances toward (and retreats from) economic, political/legal, and social equality for black Americans.

Objectives

1. To understand the content of the Fourteenth Amendment
2. To interpret how congressional acts and Supreme Court decisions have either advanced or regressed equal rights for black Americans.
3. To assess causes for the retreat from and advances toward equality.
4. To evaluate the role of the Fourteenth Amendment in the struggle for equality.

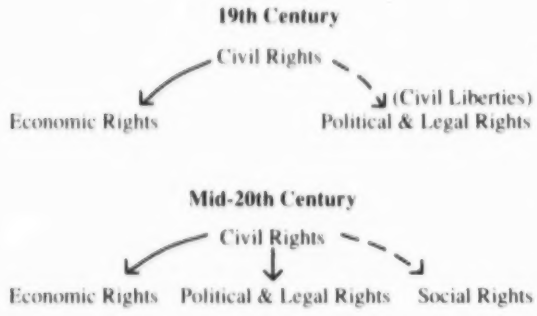
Procedure

1. Prior to Class: Duplicate handouts. Prepare butcher paper or transparency as a master copy of the bar graph (Handout 3, page 50).
2. Introduction to the Lesson: Stimulate interest by asking the following questions:
   a. What does it mean to have rights? Are they different from privileges?
   b. What privileges or rights go with citizenship?
   c. What is the difference between civil rights and civil liberties?
   d. How were/are voter qualifications set? in the nineteenth century? in the twentieth? at present?
3. Divide the class into groups of three or more. Write on the board in three columns the following: "Brainstorm" and list your _____ (use the lists on the next page as a guide).

Economic Rights	Political & Legal Rights	Social Rights
make contracts	give evidence	marry and intermarry
sue and be sued	sue and be sued	access to public accommodation
own real & personal property	hold public office	access to public transportation
protection of property	protection of person	free access to education
inherit	jury duty	worship where and when you please
buy and sell property	voting	

List and clarify the students' responses on the board.

4. Explain the following:
   Civil liberties have historically meant the Bill of Rights. Nowadays civil rights and civil liberties mean pretty much the same thing; they are used interchangeably. But in the 1860s the term "civil rights" had a different meaning. It meant basically one's economic pursuits. The protection was not only from other individuals but from the government as well. Political rights were not civil rights because they were considered to be privileges rather than rights. Social rights were a matter of personal taste and prejudice. No one considered it governmental business to be concerned with discrimination based on color, sex, etc. The Thirteenth Amendment really is the beginning of modern civil rights law and policy according to constitutional historian Herman Belz. Therefore, one can begin to see the development as it takes place in the twentieth century from its beginnings in the nineteenth:



5. Give each student Handout 1, the Student Background Information. Go over in class for understanding. Ask if the Thirteenth Amendment granted any rights. Point to the bar graph and explain that it did not. So there is no advance. Point out that the Civil Rights Act of 1866 has been done for them as an example. Go over and discuss whether they agree with the placement on the bar graph. Point out that it is subjective.

   Distribute Handout 2 (Primary Sources) and Handout 3 (Bar Graph). Explain that in their groups they will read the congressional acts or Supreme Court decisions. To which point on the bar graph was the economic, political/legal or social right extended because of that act or decision? After marking their graph they should be able to explain their placement. It means weighing the rights granted to the blacks against those which the students understand to be full rights or equality. Go over together in class coloring the master bar graph for comparison and discuss.

6. Debriefing: You will want to ask follow-up questions such as:
   a. What were the causes for the advances and retreats?
   b. Which of the areas of civil rights is basic to others?
   c. Which is seemingly the most difficult to obtain?
   d. How would you assess the role of the Fourteenth Amendment in achieving equality? Is the struggle for equality over?

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Student Handout 1

STUDENT BACKGROUND INFORMATION

The Civil War destroyed an old economic system in the United States based on Negro slavery. The Thirteenth Amendment had freed the slaves. It had not, however, given blacks citizenship or any defined rights. This would have to be done in order to provide real freedom. True freedom, according to constitutional historians Harold M. Hyman and William Wiecek, is legal protection of person, property and rights. Without rights and legal protection of those rights, the blacks would be free in name only.

The idealists and the Radical Republicans had hoped to transform the nation during Reconstruction into a just society. The question for them was how to best secure rights for the blacks and to protect these rights. They were concerned about the state governments because it was to state governments that most people looked for governmental functions and rights. Federal power had been interpreted narrowly so that Washington, D.C. seemed not

only remote but unreliable. But, anything less than federal protection of rights would leave the blacks to the mercies of the states. They knew the southern states would attempt to re-enslave the blacks, if not legally then economically.

States also determined voter qualifications. Article I, Section 2 gave this power to the states. If a person was eligible to vote in state elections, then he was eligible to vote in federal elections. States had historically denied suffrage (the right to vote) and political participation in the early years to all but white, male property owners. As this changed to include more white males over 21, free blacks and women were still being excluded from the political process. When the Fourteenth Amendment was ratified in 1868, the Supreme Court then had the right to determine on the national level matters concerning citizenship. It made the federal government the source of citizenship as well as the states. The idealists believed they could use the federal laws to ensure the protection of the civil rights being granted to blacks and to protect their citizenship. But what was citizenship?

In 1868 it was unclear as to what was meant by citizenship. It is not totally clear today. Chief Justice Earl Warren once defined citizenship as "man's basic right, for it is nothing less than the right to have rights. Remove this priceless possession and here remains a stateless person disgraced and degraded in the eyes of his countrymen."

Through the Fourteenth Amendment, citizenship had been granted to the blacks. As a matter of fact, dual citizenship had been granted. As a citizen of both the state in which he lived and the nation, he enjoyed equal protection of the laws, immunities and privileges, and due process of law. And what about voting rights? Frederick Douglas felt that the minimum right for adequate protection was to have legal remedies through access to the courts and the voting booth. He shared this view with a number of others concerned about the ultimate withdrawal of federal troops from the South. As a result, the Fifteenth Amendment was ratified giving black men the right to vote. This granting of civil rights was the new congressional redefinition of a just society which included black men.

The promise of economic security and political equality was now in legal existence. The budding promise for a just society was unfolding. What happened? Why did it take the Second Reconstruction of the twentieth century before the emergence of true equality could begin? The following exercise will enable you to understand what happened in the struggle for a just society based on equality.

Student Handout 2

PRIMARY SOURCES— CONGRESSIONAL ACTS AND SUPREME COURT DECISIONS

1. AMENDMENT XIII (1865)

   SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

   SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

2. THE CIVIL RIGHTS ACT (April 9, 1866)

   Shortly after the Civil War was over several southern states, acknowledging the destruction of slavery within their borders, attempted to define what rights the newly freed blacks would have. As a result, several southern states passed what were called Black Codes. These codes were harsh, thinly disguised attempts to re-enslave the newly freed Negro. The Republican Congress passed a federal law to nullify these infamous "Black Codes." The result was the Civil Rights Act of 1866 which was an attempt to define the civil rights belonging to the newly freed blacks. Most of its provisions were written into the Fourteenth Amendment two years later.

   An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication

   BE IT ENACTED, that all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall have the same rights, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties to none other . . .

   The act went on to state that any person who tried to deprive the newly freed blacks of their rights would be charged with a misdemeanor, and if convicted, punished by a fine of not more than $1,000 or one year in jail or both. The case would be heard in the United States federal district courts.

3. AMENDMENT XIV (1868) (relevant section only)

   The Fourteenth Amendment "nationalized citizenship" which had previously been the domain of the states. States had up until this time defined who could be a citizen. It guaranteed "privileges and immunities," a process due its citizens, and it mentioned equality for the first time in the Constitution. Citizens were to be protected equally.

   SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

   AMENDMENT XV (1870)

   It soon became apparent that the Fourteenth Amendment was not going to secure the right to vote for the newly freed blacks, a right that Frederick Douglas had felt was the minimum for protecting other rights. Congress, therefore, attempted to remedy this with a constitutional amendment. In order to make the amendment *effective*, Congress also passed the "Enforcement Act" which sought to get rid of procedures and technicalities for registering and voting that would intimidate the blacks.

   SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

   SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

4. THE SLAUGHTER-HOUSE CASES, 16 Wallace 36 (1873)

A corrupt Louisiana legislature passed a bill in 1869 which established a monopoly for the Crescent City Stock Landing and Slaughterhouse Company. This meant that all livestock had to go through this company to be slaughtered and over a thousand butchers and livestock dealers were simply left out of the butchering business. The butchers and dealers filed suit under the Thirteenth Amendment prohibition of involuntary servitude and the Fourteenth Amendment privileges and immunities clause. The case went to the Supreme Court where, for the first time, "privileges and immunities" of U.S. citizens were defined. The Court stated that the Thirteenth Amendment protected former slaves but did not grant any more rights to the whites.

Decision:

> This court is thus called upon for the first time to give construction of these articles [Amendments 13, 14 and 15] . . . the one pervading purpose in them all . . . [is] the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freedman and citizen from the oppression of those who had formerly exercised unlimited dominion over him. . . . [T]here is a citizenship of the United States, and a citizenship of a State, which are distinct from each other, ...Of the privileges and immunities of the citizen of the United States, and . . . of the citizen of the State it is only the former which are placed by this clause under the protection of the federal Constitution, and that the latter . . . are not intended to have an additional protection by this paragraph of the amendment.
>
> Was it the purpose of the Fourteenth Amendment . . . to transfer the security and protection of all the civil rights . . . from the States to the federal government? . . . to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States? . . . .[T]he effect is to fetter and degrade the state governments by subjecting them to the control of Congress. . . .We are convinced that no such results were intended by the Congress which proposed these amendments, nor by the legislature of the States which ratified them. . . .Having shown that the privileges and immunities relied on in the argument are those which belong to citizens of the States as such, and that they are left to the state governments for security and protection, and not by this article placed under the special care of the federal government.

And what were these national rights?

> To come to the seat of government to assert any claim . . . to seek its protection . . . to demand the care and protection of the Federal government over his life, liberty and property when on the high seas or within the jurisdiction of a foreign government . . . .

In other words, neither the Thirteenth nor the Fourteenth Amendment could help the butchers because they were meant for the protection of the newly freed slave. The Fourteenth did not extend the butchers' rights as citizens; therefore, they would have to go back to state courts for remedy. As for protection of citizenship rights for blacks, since the states granted the political, social, and economic rights, the states would have to protect those rights. The federal government had no power to protect those. But the federal government could protect the rights of blacks while on the high seas!

5. THE CIVIL RIGHTS ACT (March 1, 1875)

An Act to protect all Citizens in their Civil and Legal Rights

> Whereas, it is essential to just government, we recognize the equality of all men before the law, and hold that it is the duty of government in its dealings with the people to mete out equal and exact justice to all, or whatever nativity, race, color, or persuasion, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law: Therefore,
>
> BE IT ENACTED, That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and to other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

Any person who violated the law was subject to conviction of a misdemeanor which carried punishment of fine and or imprisonment. The federal district courts had jurisdiction to hear these cases.

6. UNITED STATES v. CRUIKSHANK, 92 U.S. 542 (1876)

Fraud and intimidation were used in the elections of 1872. The governorship of Louisiana was in question. Also, in Grant Parish, the Democrats and Republicans were contesting the sheriff's race. When President Grant recognized the Republican candidate as the winner, rifles were sent to the new governor to arm the Republican sheriff and his nearly all black followers. The all white supporters of the Democratic contender attacked the Colfax Courthouse where the Republicans were holding out. At least 69 black Republicans were killed in the rout; 20 of these were murdered the night after the battle.

Nine white men, among whom was a William B. Cruikshank, were put on trial for having violated the "Enforcement Act" which was passed in 1870 to make the voting rights guaranteed in the Fifteenth Amendment effective. It was charged that these white men had conspired to intimidate blacks to prevent them from exercising their constitutional rights. Four were convicted and the case went to the Supreme Court. In its decision, the Supreme Court dealt a serious blow to the effectiveness of the Fourteenth Amendment in protecting the citizenship rights of blacks.

Decision:

> [The Fourteenth Amendment] adds nothing to the rights of one citizen as against another. It simply furnishes an additional guarantee against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society . . . .The right to vote in the States comes from the States; but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States; but the last has been . . . .
>
> . . . .[I]t does not appear that it was their (Cruikshank and the three others) intent to interfere with any right granted or secured by the Constitution or law . . . although [w]e may suspect that "race" was the cause of the hostility; . . . .

So, the Fourteenth Amendment added no new civil rights, but it did prohibit the denial by the states of existing rights if you already had them. It was then left up to the states to prevent the denial of civil rights by individuals. And those individuals knew that state authorities couldn't or wouldn't interfere in their intimidation of black voters.

7. CIVIL RIGHTS CASES, 109 U.S. 3 (1883)

In 1877, federal troops were withdrawn from the South ending the regime of the carpetbaggers. It also was the beginning of the end of any political and social equality blacks had enjoyed during the period of Reconstruction. The South began to use intimidation and fear to recapture political control. Social equality had already been

eroded through Jim Crow practices during the later Reconstruction period. The term "Jim Crow" had come to mean the practice of segregation of blacks. The term was thought to have come from a song performed by a minstrel. Whatever the origin, it meant separateness, segregation, a black's "place." During the 1880s, these practices were transformed into rigid codes which had the force of law behind them. It became racial ostracism sanctioned by law which extended to housing and jobs, churches and schools, eating and drinking, sports and play, public transportation, prisons and orphanages, hospitals, the armed forces, funeral homes and cemeteries.

Jim Crow also extended into the polling places where residence requirements, poll taxes, the ability to read and interpret sections of state constitutions, etc. became a means of denying voting rights to blacks. But would Jim Crow hold up against the Fourteenth Amendment and its protection of black citizenship rights? Only the Supreme Court could answer that. And, indeed the Court did in the following two cases – the Civil Rights Cases and *Plessy v. Ferguson*.

The Civil Rights Act of 1876 had not only struck down as unconstitutional any state law that discriminated but it attempted to get at private acts of discrimination. Six cases went before the Supreme Court to be heard together all involving black patrons. The first case involved a refusal of admission to the Grand Opera House in New York City. The others involved refusals to serve food, to rent hotel lodging, to be seated in the ladies car of a train and the dress circle of a San Francisco theater. In an 8-1 decision, the Supreme Court struck down as unconstitutional the most important parts of the Civil Rights Act of 1875. The Court could find nothing in the Thirteenth and Fourteenth Amendments to give authority to the act.

Decision:

> Rights and privileges are undoubtedly secured by the Fourteenth Amendment; but they are secured by way of prohibition against State laws . . . The wrongful act of an individual . . . is simply a private wrong, or a crime of that individual; but if not sanctioned in some way by the State, or not done under State authority, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress.

If one were discriminated against, one would have to go to the state for a correction of the wrong. The states had been the problem in the first place, which is why the Fourteenth Amendment was enacted.

> It would be running the slavery argument in the ground to make it apply to every act of discrimination which a person may see fit to make as to the guest he will entertain or as to the people he will take into his cab . . . Mere discrimination on account of race or color was not regarded as badges of slavery . . . On the whole we are of the opinion that no . . . authority for the passage of the law in question (the Civil Rights Act of 1876) can be found in either the Thirteenth or Fourteenth Amendment of the Constitution; and no other ground of authority for its passage being suggested, it must necessarily be declared void, at least so far as its operation in the several States is concerned . . . .

Justice John Marshall Harlan delivered a dissenting opinion. He denied the lack of authority in the Thirteenth and Fourteenth Amendments.

> Exemption from race discrimination in respect of the civil rights which are fundamental in citizenship in a republican governme nt is . . . a new right, created by the nation, with express power in Congress, by legislation, to enforce the constitutional provision from which it is derived.

He went on to stress that the states still have the same authority to define and regulate civil rights. But now its exercise is the subject of enforcement through the national government to make sure that exemption of citizens from discrimination is protected. Harlan referred to the Commerce Clause, leaving open a suggestion that would be taken up by a more determined people in a more determined time.

> Might not the act of 1875 be maintained in that case, as applicable at least to commerce between the States . . . I suggest, that it may become a pertinent inquiry whether Congress may in . . . its power to regulate commerce among the States enforce . . . equality of rights, without regard to race, color or previous condition of servitude . . . .

8. PLESSY v. FERGUSON, 163 U.S. 537 (1896)

Jim Crow laws spread rapidly through the South after 1887. The question was, were they constitutional because of Supreme Court interpretations of the meaning of the Thirteenth and Fourteenth Amendments? In 1891, the "Citizens' Committee to Test the Constitutionality of the Separate Car Law" formed in Louisiana. It was composed of a group of black citizens determined to test the Jim Crow laws, in particular the Jim Crow Car Act of 1890 which required "separate accommodations for the white and colored races" and prohibited either race from sitting in the seats of the other. Homer Plessy, who was one-eighth black and could pass for white, boarded the East Louisiana Railroad in New Orleans and sat down in the white-only coach. He refused to leave when asked to do so and was arrested and convicted of violating the Jim Crow Car Act. The case went to the Supreme Court. There the Court upheld not only the act but the idea that separate but equal was constitutional.

Decision:

> The object of the [Fourteenth] Amendment was undoubtedly to enforce the absolute equality of the two races before the law, but . . . it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality or a co-mingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, ... [W]e cannot say that a law which authorized or even requires the separation of the two races in public conveyances is unreasonable or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures . . . . [T]he underlying fallacy [is] in the assumption that the enforced separation of the two races stamps the colored race with the badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction on it . . . . If the two races are to meet on terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals . . . . Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.

Justice John Marshall Harlan dissented with one of the most quoted ideas in constitutional history:

> . . . these two amendments [Thirteenth and Fourteenth] if enforced according to their true intent and meaning, will protect all the civil rights that pertain to freedom and citizenship . . . The white race deems itself to be the dominant race in this country . . . But in the view of the Constitution, in the eye of the law, there is . . . no superior, dominant, ruling class of citizens . . . Our constitution is colorblind, and neither knows nor tolerates classes among citizens. With respect to civil rights, all citizens are equal before the law.

9. THE CIVIL RIGHTS ACT OF 1964

As a result of Supreme Court decisions, such as the Civil Rights Cases of 1883 which gave support to Jim Crow laws, segregated society became fact in America. In 1896, *Plessy v. Ferguson* cemented the practice with its "separate but equal" decision. Therefore, there were separate schools, drinking fountains, waiting rooms, sections on trains and buses, graveyards, mortuaries, churches, even separate armies fighting common enemies in World War I and II. For all practical purposes, their economic, political/legal and social rights were non-existent. White America had forgotten blacks were even here. And when whites did remember, it was to participate in lynchings, acts of intimidation, humiliation, and degradation.

During the New Deal era, Eleanor and President Roosevelt took steps to force white America to remember its black citizens, the segment of the society hardest hit by the Depression. Blacks were appointed to senior government posts and relief was fairly apportioned to the one out of two unemployed black workers.

President Harry Truman made the first assault on civil rights issues with his Justice Department. It entered cases, filed by the NAACP (National Association for the Advancement of Colored People), as a "friend of the court." Truman forbade segregation in the military and ordered an end to racial discrimination in federal employment and government contracting.

The historic ending of school segregation came with *Brown v. Board of Education* in 1954. Blacks ended segregation on buses in Montgomery, Alabama, with a boycott. Student sit-ins at segregated lunch counters attacked segregation in public eating places. The University of Mississippi, traditionally a bastion of white supremacy, was forced to admit James Meredith, its first black student. Dr. Martin Luther King, Jr. led a peaceful march of a quarter of a million people to Washington, D.C., and spoke eloquently for the cause of black citizens. The date was August 1963. White America had become profoundly aware of black America.

But no major legislation dealing with civil rights had been enacted for over 82 years. In June 1963, President John F. Kennedy called on Congress to provide legislation to address all forms of individual discrimination. Its stated purpose was "to promote the general welfare by eliminating discrimination based on race, color, religion, or national origin in . . . public accommodations, . . . to enforce the provisions of the Fourteenth and Fifteenth Amendments, to regulate commerce among the several states . . . ."

President Kennedy was assassinated in November. President Johnson, returning from Dallas shortly after taking the oath of office, decided on Air Force One to go "all the way" on civil rights. Five days after the assassination, he told a joint session of Congress that passage of the Civil Rights Act would be the greatest tribute they could make to honor President Kennedy's memory. The Civil Rights Act of 1964, 78 Stat. 243, Pub.L. No. 88-352, was signed into law on July 2, 1964. Since Title II is the part of the act that was constitutionally challenged, that is the relevant part provided here.

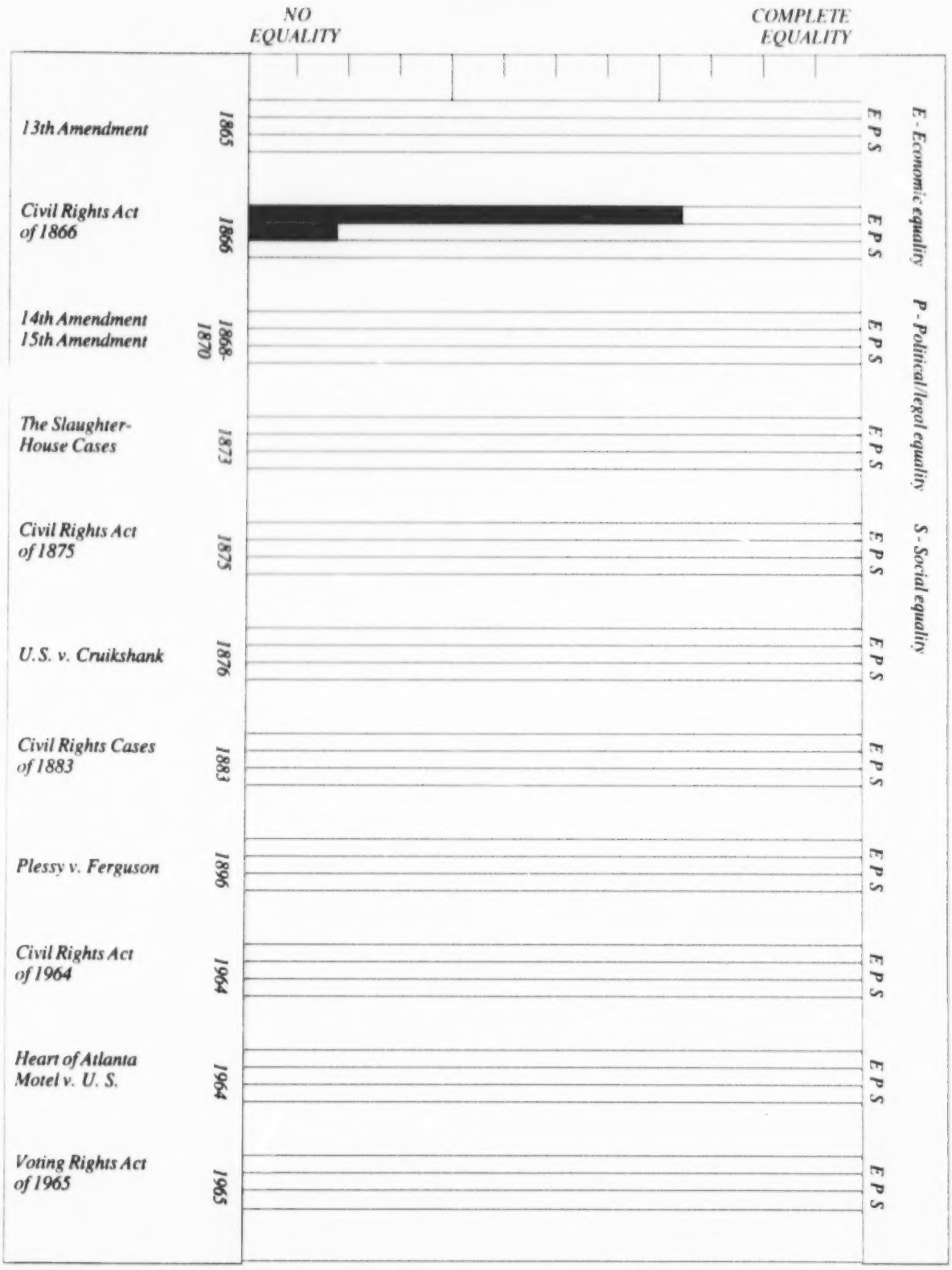
> SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.
>
> (b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:
>
> (1) any inn, hotel, motel, . . . which provides lodging to transient guests, other than an establishment . . . which contains not more than five rooms for rent . . . and which is actually occupied by the proprietor . . . as his residence;
>
> (2) any restaurant, cafeteria . . . ;
>
> (3) any motion picture house . . . ;
>
> (c) . . . "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State . . . .

10. THE HEART OF ATLANTA MOTEL v. THE UNITED STATES, 379 U.S. 241 (1964)

The appellant, the owner of a large motel in Atlanta, Georgia, sued to have Title II of the Civil Rights Act of 1964 struck down as unconstitutional. The owner restricted his clientele to white persons, three-fourths of whom were interstate travelers. He had 216 rooms available to transient guests and was conveniently located near two interstate highways and two state highways. There was national advertising to solicit business through national magazines and 50 billboards and highway signs within the state. Approximately 75% of the motel's registered guests were from out of state which included convention trade. The appellant maintained that Title II of the Act exceeded Congress' power to regulate commerce and thus violated the Commerce Clause under Article I, Section 8, clause 3; that the Act violated the Fifth Amendment by taking liberty and property without due process of law and just compensation; and that by having to rent available rooms to Negroes against his will, he was being subjected to involuntary servitude in violation of the Thirteenth Amendment.

Decision: The Supreme Court upheld Title II of the Civil Rights Act of 1964 as constitutional, a valid exercise of Congress' power under the Commerce Clause as applied to a place of public accommodation serving interstate travelers. It pointed out that the decision handed down in the civil rights cases of 1883 was not applicable because the "Court did not fully consider whether the 1875 Act could be sustained as an exercise of the commerce power." They determined that the test

Student Handout 3



of the exercise of the power of Congress under the Commerce Clause is simply "whether the activity sought to be regulated is "commerce which concerns more States than one" and has a real and substantial relation to the national interest."

The Court then proceeded to prove that denying people accommodations in motels because of race fell under the definition in that of "approximately 20,000,000 Negroes in our country," many are able to, and do, travel among the states in automobiles.

Congress also considered this a "moral problem" as well. In a concurring opinion, Justice Goldberg pointed out that the purpose of the act was to solve the problem of "the deprivation of personal dignity that surely accompanies denials of equal access to public establishments. Discrimination is not simply dollar and cents, hamburgers and movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public because of his race or color. It is equally the inability to explain to a child that regardless of education, civility, courtesy, and morality he will be denied the right to enjoy equal treatment, even though he be a citizen of the United States and may well be called upon to lay down his life to assure this Nation continues."

Through concurring opinions, the Thirteenth and Fourteenth Amendments were again focused upon as constitutional authority against discrimination. Justice Douglas stated, ". . .our decision should be based on the Fourteenth Amendment, thereby putting an end to all obstructionist strategies and allowing every person . . .to patronize all places of public accommodation without discrimination whether he travels interstate or intrastate . . ." In addition, it was pointed out that the Thirteenth Amendment was to be regarded as "additional authority" for the legislation.

Civil rights legislation dealing with individual discrimination had thus come full circle. The Fourteenth Amendment had once again become the constitutional centerpiece in the struggle for social equality.

11. THE VOTING RIGHTS ACT OF 1965

For over fifty years blacks in the South were denied access to what Frederick Douglas called the most minimum right – voting. Congress and the President tried to enact legislation during the 1950s and early 1960s that would force the South to give the vote to its black citizens. The Civil Rights Act of 1957 made it a federal offense to interfere with a citizen's right to vote in federal, state, or local elections. It didn't solve the problem. The Civil Rights Act of 1960 further strengthened the '57 law by allowing the federal government to sue states for failure to allow voter registration of blacks. Then Title I of the Civil Rights Act of 1964 made a sixth-grade education in English a basis for voter literacy. It was a means of attacking the literacy test southern states used to keep blacks from registering. The '64 law also threw out trivial reasons such as spelling errors for denying a person's registration. The same year the poll tax was targeted through the Twenty-Fourth Amendment to the Constitution, ratified January 23, 1964, which states:

> The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

The most important and most sweeping advance came when President Lyndon Johnson sent to Congress on March 17, 1965, a voting rights bill aimed at removing the rest of the obstacles to black voter registration and voting rights.

> *An Act to enforce the Fifteenth Amendment to the Constitution of the United States, and for other purposes.*
>
> BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled, That This Act shall be known as the "Voting Rights Act of 1965."
>
> SEC. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

Congress stated in the "Purpose of the Legislation" that the bill was

> designed primarily to enforce the Fifteenth Amendment to the Constitution of the United States and is also designed to enforce the Fourteenth Amendment and Article I, Section 4. To accomplish this . . . the bill (1) suspends the use of literacy and other tests in areas where . . . these tests and devices have been and are being used to deny the right to vote on account of race or color; (2) authorized the appointment of Federal examiners in such areas to register persons who are qualified; (3) empowers the Federal courts . . . to enforce the guarantees of the Fifteenth Amendment . . . (4) provides criminal penalties for intimidating, threatening, or coercing any person for voting or attempting to vote. Upon the basis of finding that poll taxes as a prerequisite to voting violate the Fourteenth and Fifteenth Amendments to the Constitution, the bill abolished the poll tax in any State or subdivision where it still exists.
>
> SEC. 4. (e) (1) Congress hereby declares that to secure the rights under the Fourteenth Amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

In the following 10 years literacy tests were permanently abolished. The number of black voters in the South increased by 2 million. The number of black elected officials increased from 100 to nearly 1,000. And these numbers have steadily increased since that time. Additional laws were passed that protected the voting rights of "language minorities." This means in some states bilingual elections are held where there are significant numbers of American Indians and Hispanics. In New Mexico, for example, election information is printed in both English and Spanish, and Navajo on their reservation.

The Fourteenth Amendment has been the basis for countless laws passed and legal challenges made in an ongoing struggle to define equality. Perhaps there is a good reason for this struggle. Is an understanding of equality fundamental to achieving a *just* society?

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Equal Protection

Different Treatment for Different Folks?/Middle David T. Naylor

UPI/Bettmann Newsphotos

Background

The quest for equality is one of the salient themes of American history. The Declaration of Independence boldly asserts that "all men are created equal" but no such phrase appears in the Constitution of the United States. Neither the Constitution drafted in 1787 nor the Bill of Rights which was added in 1791 even include the word equality much less provide a specific guarantee of it. But, during the two centuries since then, much has changed. The heroic efforts of African-Americans, women, and others to throw off the shackles of law-sanctioned discrimination and segregation have helped to make the concept of equality a cornerstone of our legal system and more of a reality in the lives of all Americans.

The poster showing two drinking fountains, one labelled "white" and the other "colored," is a vivid reminder of just how recently law-sanctioned segregation was a fixture of American life. It is also a compelling reminder of how much of an anachronism this scene has become. In contrast to many parents and teachers, students in school today have not experienced *de jure* segregation. Many students are unfamiliar with such scenes and practices and the struggles which led to their abolition. Yet that knowledge is a vital part of understanding the growth and development of this country and its way of life. Students need to understand this part of our nation's history. It is too significant to ignore. The "separate fountains" poster is an appropriate vehicle for initiating such a unit.

An important question suggested by the poster is whether or not the Equal Protection Clause of the Fourteenth Amendment requires all people to be treated in the same manner. Many students (and adults) are likely to be under the impression that the Equal Protection Clause prohibits differential treatment. That impression, however, is incorrect. The clause does *not* require identical treatment for all persons in all situations. Legal distinctions are possible and even desirable, for in some circumstances treating all people the same is inherently unequal. Controversy occurs when persons allege they are being treated differently than others.

This sample lesson is intended to be an introductory lesson for a unit focusing on the concept of equal protection, the practice of differential treatment under law, and the legal tests that have been developed for determining if and when differential treatment violates the Equal Protection Clause of the Fourteenth Amendment. Teachers interested in developing this type of unit will find useful background information and teaching ideas in back issues of *Update on Law-Related Education*, especially the Fall 1988, Winter 1988, and Fall 1981 issues.

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Procedure

1. Display the "separate fountains" poster in a prominent place in the room. Without identifying the source, post the following words from the Declaration of Independence beneath the poster: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."
2. Begin class by calling attention to the poster and asking questions related to the scene it depicts (e.g., What do you notice about this scene? Why are the two fountains so close together? What is the purpose of the signs above the fountains? Why would someone feel it was necessary to post these signs?)
3. Direct attention to the words from the Declaration of Independence that you have placed beneath the poster. Ask students first to identify the source of the words and then to suggest possible explanations accounting for the disparity between those words and the what is shown in the poster.
4. Explore differences between the Declaration of Independence and the Constitution of the United States (e.g., why each was written, when each was written, what each contains), especially the legal authority of each. Emphasize the difference between the moral force of the Declaration of Independence and the legal force of the Constitution of the United States.
5. Redirect student attention to the poster of the two fountains. Explain how the scene illustrates the "separate but equal" doctrine. Point out that racial segregation was constitutionally permissible under the "separate but equal" doctrine from 1896 to 1954. Since then, *de jure* racial segregation (i.e., under the sanction of law) has been unconstitutional. The scene depicted in the poster would not be legally permissible today.
6. Use a current newspaper article or situation dealing with a current equal protection situation to focus student attention on the question of whether the Constitution requires all people to be treated the same in similar situations. Discuss student reactions. Then distribute a copy of the exercise, "Is This Legal?", to each student. Explain what it is and how to complete it.
7. Tally student responses. Initiate discussion by selecting items where the most disagreement appears. Call on students to explain their positions.
8. Have students look at the items in the exercise. This time, ask them to identify the basis for differential treatment (e.g., gender, age, race, physical condition) used in each item. Record responses.
9. Divide students into groups. Give each group one of the categories used in the exercise for differential treatment. Have each group develop reasons for making the distinction on this basis.
10. Ask each group to share the reasons identified. Record them. Then have students compare and contrast the reasons given and why those reasons may be alike or different for the various categories.
11. Point out that our courts have developed a series of tests for determining when groups of people may be treated differently. Indicate that distinctions made on the basis of race, national origin or alien status or affecting groups with a history of unequal treatment are the most difficult to sustain.
12. Conclude by reviewing the main points covered in the lesson. Indicate that the next lesson will involve examples of differential treatment and how our courts have dealt with them (i.e., the tests used and examples of how they apply).

IS THIS LEGAL?

Instructions: Each of the following situations involves a rule or law requiring one group of people to be treated differently than another group. For each situation, circle "LEGAL" if you believe it is legally permitted or "ILLEGAL" if you believe the situation is not legally permitted. Be prepared to explain the reasons for your decisions.

LEGAL ILLEGAL 1. Setting a minimum age for purchasing cigarettes.

LEGAL ILLEGAL 2. Not letting girls play on the high school varsity football team.

LEGAL ILLEGAL 3. Forbidding smoking in public buildings and areas.

LEGAL ILLEGAL 4. Prohibiting women in the armed services from serving in combat.

LEGAL ILLEGAL 5. Establishing public elementary school classrooms that enroll only African-American boys. No others are permitted.

LEGAL ILLEGAL 6. Requiring nonresidents to pay higher tuition at state universities than residents of the state.

LEGAL ILLEGAL 7. Maintaining separate courts for young people and adults.

LEGAL ILLEGAL 8. Barring children with AIDS from attending the public schools.

LEGAL ILLEGAL 9. Hiring only teachers who are Republicans to teach in the local school district.

LEGAL ILLEGAL 10. Specifying that at least 25% of all city construction contracts be awarded to minority-owned and minority-run businesses.

LEGAL ILLEGAL 11. Not letting girls become boy scouts.

LEGAL ILLEGAL 12. Letting people who own houses pay less taxes than people who do not own houses.

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Equal Protection

Prejudice and Equality/Elementary

Arlene F. Gallagher

UPI/Bettmann Newsphotos

No government can prevent people from being prejudiced but the Fourteenth Amendment guarantees equal protection for persons within the jurisdiction of the United States. In this way, people are prevented from using the law to legitimize their prejudices. The purpose of this strategy is primarily to present a context for discussion and examination of prejudice and discrimination building to the Supreme Court's decision in *Brown v. Board of Education;* that separate could not be equal.

The vehicle chosen to accomplish these goals is children's literature for two reasons, one more noble than the other. In addition to offering a context, literature offers models of virtue, whether they be heroic models or models of quiet endurance. (Gardner, 1977). A second practical consideration is that teachers are searching for ways to use trade books as they put aside the basal readers which have dominated classrooms to the point that reading was driving the elementary school curriculum. More and more students are beginning to use the rich resource of literature to understand social studies themes and concepts. The following are some general activities that could apply to a variety of titles.

How to Use Children's Literature

GEOGRAPHY

Many of the stories take place in specific settings and what happens in the book simply could not have happened elsewhere. Setting then becomes inextricably tied up with the law. In these selections alone the following locations are pertinent: Mississippi, Kansas, New York, Georgia, Ohio, Pennsylvania, Alaska, and China. A map of the United States and of the world hung in the classroom and frequently used to indicate where the action is taking place will help to teach some geographic knowledge along with other social studies concepts.

JOURNAL WRITING

This is an excellent way to integrate writing with reading. For a single assignment, students could pretend that they are a character in a book that is being read and write a journal entry about how they feel or what they think might happen next. Or, students can choose a character and keep a journal for that character as they read a book.

GROUP JOURNALS

If a small group of students decides to read the same book they can each choose a character and write their journals from that character's viewpoint, periodically sharing their writings with the rest of the group.

DISCUSSIONS

It would be useful to have pre-discussions on several topics before using some of these books. How are people alike and different? When are differences important to know about? If you prejudge someone what does that mean? Who has lived in another part of the country or world where customs are different? How does it feel? What are ways that we can learn to feel more comfortable in different settings? How can we help others to do so?

When Separate Was Considered Equal

A short but poignant novel, *The Friendship* set in Mississippi in 1933, is the story of Mr. Tom Bee, an old black man who calls the white storekeeper, whom he has known all his life, by his first name. The storekeeper shoots Tom to save his pride in front of his other white friends. In *Mississippi Bridge*, also set in the 1930s, a 10-year-old white boy is upset by his father's bigotry and observes "separate but equal" daily on the buses. In *The Road to Memphis*, Cassie Logan is finishing high school in 1941 in Jackson, Mississippi. Cassie meets a man who has studied the law and in a few pages the author introduces two famous Supreme Court cases having to do with separate but equal and equal opportunity: Plessy v. Ferguson and *Missouri ex rel Gaines v. Canada*. Pages 142 to 147 cover this incident and would be a good excerpt to read aloud for discussion. When a black friend, sadistically teased by white boys, injures one of them with a tire iron, Cassie has to help him flee the state for his safety. On the trip to Memphis, Cassie starts to confront the unfairness of separate restrooms. When she and her friends stop at a gas station there is no ladies room for Negroes. She doesn't want to go "into the bushes" as the gas station attendant suggests. This is a dramatic scene that pulls the reader into the emotional life of this young high school girl trying to face the prejudice she has known all her life. Pages 177 through 180 cover this incident.

In 1947 the Brooklyn Dodgers went west to play the Cincinnati Reds, taking with them the first black man to play on a major league baseball team – Jackie Robinson. This man had endured hostility and abuse from opposing players, fans, and even some of his own teammates. Pee Wee Reese, the Dodger shortstop, publicly declared his support for Robinson in one of the most moving moments in sports history. *Teammates* tells the story of this event.

There is a chapter from the book *In the Year of the Boar and Jackie Robinson* called "I Pledge a Lesson to the Frog" that can be used very effectively as an excerpt. Shirley Temple Wong moves to Brooklyn from China. She speaks very little English and as a result one day at school she stands with her class and "pledges a lesson to the frog of the United States of America and to the wee puppet for witches' hands. One Asian, in the vestibule, with little tea and just rice for all." She has no friends until a miracle happens – baseball. In this chapter, her teacher tells the class about Jackie Robinson, grandson of a slave and the first Negro to play baseball in the major leagues. Using sports as a metaphor, Shirley's teacher gives the class a civics lesson on what it means to be a citizen of the United States. She brings out the idea of citizenship as a public office and how one individual can make a difference in our country. This chapter has been scripted in Readers Theatre (Gallagher, 1991).

Civil rights during the 1950s are brought to life for younger readers in *The Gold Cadillac*. The father of a black family living in Toledo, Ohio brings home a new gold Cadillac, something he has yearned for and is finally able to have. In spite of his neighbors' warnings, he drives his family to visit relatives in Mississippi where the family sees "COLORED NOT ALLOWED" signs for the first time. Predictably, but no less frightening because you expect it, white policemen are suspicious of a black man driving such a beautiful car and the father is arrested. This is the family's first encounter with ignorance and prejudice and it is all the more powerful because it is told from the point of view of the young daughter.

More than ten years after the 1954 decision of *Brown v. Board of Education* many schools were not racially integrated. In *Not Separate, Not Equal*, Malene Freeman is among the first six students from Pineridge, Georgia's "black elite" to integrate an all-white high school in 1965. By birth, she is the daughter of poor sharecroppers who died in a fire but her adoptive and well-to-do parents insist that she be one of the students to desegregate Pineridge High. The students are threatened and harassed until finally a malicious act sparks an explosive episode.

Being Different

A different physical appearance is often the basis for discrimination and prejudice and there are many books for young readers on this theme. *Helga High-Up* is a very tall giraffe loved by her parents who enjoyed looking up to her but when she is taunted by her classmates they learn that being tall has it advantages. *Tacky the Penguin* is also about the value of difference to a species. Tacky does not fit in with his sleek and graceful companions, but his odd behavior comes in handy when hunters come with maps and traps. Because he so unpenguinlike, he tricks the hunters into thinking there are no penguins around to be captured.

Two books that help young people to accept their own differences are *Elmer*, a story about a patchwork elephant who longs to look like other elephants and *Pingo the Plaid Panda*, about a panda who acts unfriendly toward some other pandas because he thinks they don't like him.

The Theme of Prejudice in Stories

One of the reasons prejudice is so powerful is that once you accept a stereotype of a particular group that thought shapes how you interact with a member of that group. This in turn influences the other person's behavior but the person with the prejudiced attitude cannot see how his or her prejudice shapes what he or she sees. (Senge, 1990)

Ralph and Alice are two rabbits in *Wanted: Warm, Furry Friend* who decide they don't like each other the minute they meet. They never speak but rather base their dislikes on appearances and behavior. When Ralph reads a personal advertisement in the newspaper seeking a "warm, furry friend" he responds not realizing it is Alice who placed the notice.

Ralph and Alice become friends through correspondence and when they finally meet the reader will be delighted with the outcome. This simple picture book illustrates an important reminder about people and the way we make judgments based on superficial attributes which often prevent us from getting to know the real person that isn't immediately visible.

A similar theme is presented in *Loudmouth George and the New Neighbors*. When a family of pigs moves next door, George the rabbit wants nothing to do with them. Harriet the dog tries to convince George to go with her to meet the new neighbors but George refuses arguing, "But pigs are dirty . . . they eat garbage. They're not like us at all." At first,

George is disgusted when all of his friends go to play with the "smelly old pigs" but soon he finds himself all alone. He gives in and finds out they aren't so bad after all. When some cats move in George reacts with prejudice again but this time his stereotype is short-lived.

In *They're All Named Wildfire*, set in rural Pennsylvania a friendship grows between two girls who live beside each other in a duplex house. Jenny is white, Shanterey is black and quickly rejected by Jenny's friends. Jenny doesn't want to give up her friends and initially joins them in ostracizing Shanterey. It doesn't feel right and eventually she sides with Shanterey and they develop the closest kind of friendship possible. Their love of horses and their stand against the bigotry and racism of other children and adults draws them together. When she witnesses the rejection and cruelty of her former friends, Jenny realizes she would have been just like them if Shanterey hadn't moved right next door. This is a dramatic illustration of how it becomes impossible to treat people as stereotypes when we reduce our distance from them and get to know them as individuals. The language in the book is strong but appropriate.

Reprinted several times since it was named a Newbery Honor Book in 1932, *Calico Bush* is a classic pioneer story set in Maine during the winter of 1743. Maggie, orphaned shortly after her French family arrives in the New World, has promised to serve the Sargent family for six years in return for food, shelter and clothing. She is treated with suspicion because she is a "foreigner." She is taunted because of her French accent and ridiculed because she is only a bound out girl. However, the reader never feels pity for Marguerite Ledoux whose quiet self-containment and dignity is apparent. She draws comfort from the children in her care and from the friendship extended to her by a respected old woman in the community.

Another recently reprinted book, *The Terrible Things* is an allegory about animals who are, by selected characteristics, systematically eliminated from the forest while others do nothing to prevent it. It becomes clear fairly early that this is a metaphor for what happened during the Holocaust and can be used to stimulate discussion about how people have acted similarly.

The law has been used many times to discriminate against groups of people. Gypsies have long been the victim of prejudice as the reader learns in *Savina the Gypsy Dancer*, a story about tribal devotion and family loyalty but also about prejudice and the lengths to which powerful people will go to get what they want.

The only reason Savina's Gypsy tribe is welcome in the land of a harsh king is because of her magical dancing. However, her dancing may also be the cause of her people's ruin because she is so captivating that the king decides that she may be a threat to his power. When he tries to convince the Gypsies to leave Savina with him so he could keep an eye on her they refuse because they value their freedom and Savina says she would feel like a caged bird. They king decides that she must be surrendered to him and in attempting to get her he has the Gypsies' horses stolen. When this doesn't work, he has their tents ripped and finally their tools seized. Kalo, their chief, refuses to give in to the king and the tribe finds laws passed against them so that they cannot work – no coppersmithing or fortune-telling. Only Savina's dancing in villages they visit brings them money for food. When the soldiers finally close in on them it is Savina who saves the tribe by dancing and enchanting them so that they drop their weapons and dance with her until they fall to the ground exhausted, allowing the tribe to escape.

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P = primary (grades 1, 2, 3)
I = intermediate (grades 4, 5, 6)
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Congress of the United States

begun and held at the City of New-York, on
Wednesday the Fourth of March, one thousand seven hundred and eighty nine

THE Conventions of a number of the States having at the time of their adopting the Constitution expressed a desire in order to prevent misconstruction or abuse of its powers that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government will best ensure the beneficent ends of its institution

RESOLVED by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States as amendments to the Constitution of the United States all or any of which Articles when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes as part of the said Constitution viz.

ARTICLES in addition to, and amendment of the Constitution of the United States of America proposed by Congress and ratified by the Legislatures of the several States pursuant to the fifth Article of the original Constitution.

Article the first — After the first enumeration required by the first Article of the Constitution there shall be one Representative for every thirty thousand until the number shall amount to one hundred after which the proportion shall be so regulated by Congress that there shall be not less than one hundred Representatives nor less than one Representative for every forty thousand persons until the number of Representatives shall amount to two hundred after which the proportion shall be so regulated by Congress that there shall not be less than two hundred Representatives nor more than one Representative for every fifty thousand persons

Article the second — No Law varying the compensation for the services of the Senators and Representatives shall take effect until an election of Representatives shall have intervened

Article the third — Congress shall make no Law respecting an establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech or of the press or the right of the people peaceably to assemble and to petition the Government for a redress of grievances

Article the fourth — A well regulated militia being necessary to the security of a free State the right of the people to keep and bear arms shall not be infringed

Article the fifth — No Soldier shall in time of peace be quartered in any house without the consent of the Owner nor in time of war but in a manner to be prescribed by Law

Article the sixth — The right of the people to be secure in their persons houses papers and effects against unreasonable searches and seizures shall not be violated and no Warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized

Article the seventh — No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces or in the Militia when in actual service in time of War or public danger nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb nor shall be compelled in any criminal case to be a witness against himself nor be deprived of life liberty or property without due process of law nor shall private property be taken for public use without just compensation

Article the eighth — In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed which district shall have been previously ascertained by law and to be informed of the nature and cause of the accusation to be confronted with the witnesses against him to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defence

Article the ninth — In suits at common law where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved and no fact tried by a jury shall be otherwise re-examined in any Court of the United States than according to the rules of the common law

Article the tenth — Excessive bail shall not be required nor excessive fines imposed nor cruel and unusual punishments inflicted

Article the eleventh — The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people

Article the twelfth — The powers not delegated by the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people

ATTEST

Frederick Augustus Muhlenberg Speaker of the House of Representatives

John Adams Vice President of the United States, and President of the Senate

John Beckley Clerk of the House of Representatives

Sam.A. Otis Secretary of the Senate

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Special Committee
on Youth Education
for Citizenship

American Bar Association